

The likelihood of success on the merits is the “main bearing wall” of the test. *Corporate Techs., Inc. v. Harnett*, 731 F.3d 6, 9 (1st Cir. 2013). To demonstrate a likelihood of success, plaintiffs must establish more than a “mere probability of success;” instead, they must show a “strong likelihood they will prevail.” *Sindicato Puertorriqueno de Trabajadores v. Fortuno*, 699 F.3d 1, 10 (1st Cir. 2012).

This Court reviews the grant or denial of a TRO for abuse of discretion. *Jean v. Mass. State Police*, 492 F.3d 24, 26 (1st Cir. 2007). Separately, findings of law when determining the likelihood of success on the merits are reviewed *de novo*. *OfficeMax, Inc. v. Levesque*, 658 F.3d 94, 97 (1st Cir. 2011).

## ARGUMENT

### **1. The plaintiff failed to prove a substantial likelihood of success on the merits.**

The Plaintiff has not proved a substantial likelihood of success on the claim that BCHS violated F.M.’s First Amendment rights. To the contrary, the court below correctly denied the Plaintiff’s motion for a TRO. First, F.M.’s TikTok video falls within the exception the Supreme Court articulated in *Tinker* since the video could reasonably be foreseen to disrupt school activities. Second, the Plaintiff’s argument that BCHS cannot regulate off-campus speech, like F.M.’s TikTok, fails. The Supreme Court has recognized schools may impose proportionate and reasonable punishment on certain kinds of off-campus speech, like F.M.’s TikTok. Finally, courts have held school administrators should be given deference in their disciplinary decisions.

#### **A. F.M.’s TikTok video was reasonably foreseen to substantially disrupt school activities.**

Students do not lose their constitutional rights at the “schoolhouse gate.” *Tinker*, 393 U.S. at 506. Yet First Amendment rights may be limited “in light of the special characteristics of the school environment.” *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988). School

officials may restrict student speech if they reasonably “forecast substantial disruption . . . of school activities.” *Tinker*, 393 U.S. at 514.

Courts analyze all facts known to the administrator at the time of discipline to determine whether they acted reasonably. *Norris ex rel. A.M. v. Cape Elizabeth Sch. Dist.*, 969 F.3d 12, 31 (1st Cir. 2020). Given the school’s policy on speech threatening the school community and the public nature of the TikTok, Principal Tran reasonably determined that F.M.’s speech would cause substantial disruptions of school activities.

Content advocating for threats upon a school’s campus implicates legitimate security concerns. A school has a duty to maintain safety on school grounds. *See Lowery v. Euverard*, 497 F.3d 584, 596 (6th Cir. 2007). BCHS takes this responsibility seriously and maintains a “zero-tolerance policy” for threats or suggestions of violence against any member of the school community. J.A. 4. Tran assessed that F.M. violated this policy. F.M. not only suggested threats of violence, but actively encouraged it. She directly targeted the school community by asking others to “threaten to shoot a few teachers.” J.A. 36.

This violation would result in a substantial disruption of school activities. The school administrative guidelines hold that the school must enter a Level Two Lockdown whenever there is a violation of the zero-tolerance policy. J.A. 15-22. At a minimum, that would involve closing the school entrance and exits, requiring students to remain in their classrooms during class and lunch periods, informing the local police station to send two patrols to the school, informing all the students’ parents, addressing any calls or concerns parents have, cancelling any events both during and after school for that day, and consulting with the local police department and superintendent’s office to take any other steps deemed necessary. J.A. 18-22.

Tran was familiar with these policies and knew that they would be applied without

exception. The national concern of school shootings and gun violence only lend support to the reasonableness of her actions. See *LaVine v. Blain Sch. Dist.*, 257 F.3d 981, 987 (9th Cir. 2001) (noting the importance of context and emphasizing the national concern around school shootings in assessing the school’s reasonableness). Given the unfortunate frequency of school gun violence, the zero-tolerance policy was strictly enforced by BCHS. Thus, Tran reasonably foresaw the chain reaction that F.M.’s TikTok would create, resulting in substantial disruption of school activities.

It is widely accepted that school administrators may punish individuals who threaten the school environment. While the First Circuit has yet to address whether schools may suspend a student who threatened the school community, other circuits have consistently upheld such penalties. For instance, in *Wisniewski v. Board of Education*, the Second Circuit upheld the suspension of a student for threatening conduct. In that case, a student had sent an I.M. message with an icon “depicting and calling for the killing of his teacher.” 494 F.3d 34, 38 (2007). While administrators determined that the student had no truly violent intent, Court concluded that, for this conduct, “*Tinker* affords *no* protection against school discipline.” *Id.* at 39 (emphasis added).

Similarly, in *Wynar v. Douglas County School District*, the Ninth Circuit upheld a suspension for a student who threatened teachers on a MySpace page. 728 F.3d 1062, 1065 (2013). The Ninth Circuit decided that, considering the violent nature of the message, “school officials have a duty to prevent the occurrence.” *Id.* at 1070. The court held it was reasonable to take the student’s message seriously because “the harm described would have been catastrophic if it occurred.” *Id.* at 1071. Therefore, it was reasonable school would be disrupted as “considerable time” would be dedicated to the fallout. *Id.* Other circuits have ruled in the same way. See, e.g., *Bell v. Itawamba Cty. Sch. Bd.*, 799 F.3d, 379, 393 (5th Cir. 2015) (noting a “paramount need” to address threats against the school community).

The Plaintiff argues that the suspension is unreasonable because of the TikTok's context. She argues that F.M. is a high performing student with no disciplinary record or history of behavioral issues, suggesting she would be unlikely make threats. J.A. 60-61. Furthermore, she claims F.M. was clearly joking, noting the laughter and dance in the video as well as the "ludicrous" suggestion that someone would call in a threat every single day. J.A. 62-65. The Plaintiff argues these elements make it difficult to believe that anyone would take her seriously so forecasting a substantial disruption to school activities was unreasonable. J.A. 67. Both of these responses fail.

To start, being a high performing student is not a license to encourage classmates to threaten teachers. Courts have upheld a school's disciplinary action as reasonable even when the student was a well-regarded member of the school community. *Doninger v. Niehoff*, 527 F.3d 41, 44-45 (2d Cir. 2008) (upholding a Student Council leader's punishment for a vulgar blog post concerning school administrators). Moreover, whether F.M., individually, would threaten teachers misses the point. She posted on a public TikTok account. She actively encouraged and solicited threats. Her statements were for a broader audience. The issue is not just whether F.M. is inclined to act on her words; rather, whether any viewer might also be inclined. The potential scope of the threat poses a greater problem to BCHS. Even if it were *known* that F.M. was not a threat, her actions created more than two hundred *unknowns*, because each person who saw her video might have called in a threat. The school does not know how her followers, including dozens of BCHS students, will respond. Given both the violent subject matter and the scope of the issue, Tran reasonably predicted the school would take serious measures, disrupting daily activities.

The alleged "joking nature" of the video, suggested by laughter and dancing, is also immaterial. Even if F.M. intended the video to be a joke, her intent is irrelevant. *See Norris ex rel. A.M.*, 969 F.3d at 25 (citing *Cuff ex rel. B.C. v. Valley Cent. Sch. Dist.*, 677 F.3d 109, 113 (2d Cir.

2012)). The only relevant inquiry is whether there was a reasonably foreseeable disruption to the school based on her speech. *Id.* There are several cases where courts have held that even if a student's threats against the school community were meant as jokes, the school's disciplinary action was appropriate. *See, e.g., Wynar*, 728 F.3d at 1066 ("We do not discredit [the student's] insistence he was joking; our point is that it is reasonable for Douglas County to proceed as though he was not.").

Furthermore, the Plaintiff's argument betrays a misunderstanding of the medium of TikTok. The mere presence of dancing and laughter does not suggest that no one would take F.M.'s words seriously. TikToks frequently juxtapose serious messages with comedic elements. *See, e.g., Frankie Lantican, A TikTok Trend Has People Sharing Traumatic Experiences to a Pop Song*, Vice, Dec. 7, 2020. The dancing and laughter alone do not make it clear F.M. was joking.

Moreover, even if it would be unreasonable to believe a student would call in a threat every day to cancel school forever, it is reasonable to believe that students may call in a threat at least one time. Some of the comments to F.M.'s TikTok named specific teachers to target while others expressed strong enthusiasm. J.A. 13-14. At least one student feared that threats would be called to the school. J.A. 5. Therefore, it was reasonable for the school to believe that at least one threat may be called, requiring disruptive actions.

Principal Tran was aware of all of the above facts. When making her decision, she reasonably foresaw that F.M.'s solicitation of threats would disrupt the school. These facts indicate that the Plaintiff has not demonstrated a strong likelihood she will prevail on the merits.

**B. F.M.'s TikTok video is within the range of off-campus activity that BCHS can regulate.**

The Supreme Court has held that schools can regulate some off-campus behavior. *Mahanoy Area Sch. Dist. v. B.L. ex rel. Levy*, 141 S. Ct. 2038, 2045 (2021). The Plaintiff argues that schools

cannot regulate this kind of off-campus speech. J.A. 68. The District Court rejected Plaintiff's claim. J.A. 47-50. The District Court held that, while there is no First Circuit standard for when a school can regulate off-campus speech, it would be "faulty" if schools cannot regulate speech like F.M.'s. J.A. 47. In fact, the District Court noted that "if schools *can* regulate some forms of off-campus speech, speech like F.M.'s must plainly be within the school's ambit." J.A. 50.

The District Court's analysis is bolstered by the fact that many of the reasons the *Mahanoy* Court used to caution against off-campus speech regulation do not apply to this case. The Supreme Court noted that courts should be skeptical of attempts to regulate off-campus speech since it would amount to constant regulation of a student's speech. *Mahanoy Area Sch. Dist.*, 141 S. Ct. at 2047. Particularly for "political or religious speech," the school has a "heavy burden" to justify judicial action. *Id.* This case, however, does not involve political or religious speech. It involves a student expressing they do not wish to attend school and encouraging others to threaten teachers to cancel school. The fear of constant regulation is also mitigated by the fact the F.M.'s speech is directly addressing and targeting the school, implicating their direct interest. Not all speech would be expected to do the same, so a fear of constant regulation would be unwarranted.

The *Mahanoy* Court also highlighted a school's duty to protect unpopular ideas and facilitate the "marketplace of ideas." *Id.* While a pivotal part of a school's educational mission, "the marketplace of ideas" is not implicated here. If F.M. had expressed an unpopular opinion about gun violence, public schools, or any school policy, it would be a different matter. But that was not the case. At most, she expressed a view that vacation is better than school. While she is free to express that view, it did not result in her suspension. Rather, Tran's concern was F.M.'s call for students to make threats. The "educational" value of F.M.'s statement does little to diminish the school's interest in her call for threats on teachers.

These factors suggest that it would be appropriate to regulate F.M.'s TikTok. While neither the *Mahanoy* Court nor the First Circuit have outlined the limits of off-campus speech schools can regulate, the four circuits have crafted rules to determine whether a school's off-campus regulation of student speech is appropriate. Under any of these standards, BCHS would be permitted to suspend F.M. for her TikTok.

The Fourth Circuit, for instance, held that where "speech has a sufficient nexus with the school," school administrators can regulate off-campus speech. *Kowalski v. Berkely Cnty. Sch.*, 652 F.3d 565, 577 (2011). The court held that a MySpace page dedicated to harassing and bullying another student could be grounds to suspend a student. *Id.* Despite the fact the webpage was created off-campus, the speech could "reasonably be expected to reach the school or impact the school environment." *Id.* at 573. The student also knew that the "fallout from her conduct and the speech within the [MySpace page] would be felt by the school itself." *Id.* All of these concerns apply with equal force to the present case. F.M. posted a public TikTok to an account over eighty of her classmates follow. She understood that her audience included her classmates and it was reasonable that the consequences of her conduct would be felt by the school community, especially if one student elected to call in a threat. Her solicitation of threats against the school community and the audience the message was delivered to establish a nexus to the school, satisfying the Fourth Circuit rule.

Both the Second and Eighth Circuits have held schools can regulate off-campus speech that would fail the *Tinker* test and if it is reasonable that the speech will reach the school community. In *Doninger v. Niehoff*, the Second Circuit held that a disruptive blog posting about a school activity "was reasonably foreseeable . . . to reach school property." 527 F.3d 41, 50 (2d Cir. 2008). F.M.'s TikTok meets this standard as well. A TikTok, targeting the school community and

sent to those in the school community, would foreseeably reach the school. Similarly, in *S.J.W. v. Lee's Summit R-7 School District*, the Eighth Circuit upheld a student's punishment for their vulgar blogsite mocking black students and discussing fights at the school. 696 F.3d 771, 773 (8th Cir. 2012). The court held that the "posts were directed at [the school]" and "could reasonably be expected to reach the school or impact the environment." *Id.* at 778. Under this standard, Tran's actions were permissible.

Finally, the Ninth Circuit, while not creating a broad rule, held that at the minimum, "when faced with an identifiable threat of school violence, schools may take disciplinary action in response to off-campus speech that meets the requirements of *Tinker*." *Wynar*, 728 F.3d at 1069. On its face, F.M.'s TikTok meets this standard. She created an identifiable threat of school violence by actively calling for others to make threats against the school. And, as previously established, her TikTok would foreseeably cause substantial disruption to the school. Under the Ninth Circuit rule, Tran thus acted appropriately and lawfully by suspending F.M. for her actions.

The Plaintiff argues that the school's interest in F.M.'s off-campus speech is diminished because it is not apparent that she is referring to BCHS. As was the case in *Mahanoy*, F.M. "appeared outside school hours from a location outside the school" and she "did not identify the school in her posts." *Mahanoy Area Sch. Dist.*, 141 S.Ct. at 2046. This argument fails since, unlike in *Mahanoy*, F.M.'s audience understands that she is referring to BCHS. Her profile is followed by all her classmates and dozens of other students at her school. J.A. 1-3. In the past, F.M. has also posted several other TikTok's from inside BCHS or referring to BCHS. J.A. 6-12. So, even if not immediately apparent, it was apparent to her audience which school community she was referencing. Her followers' implied understanding is enough to implicate the school's concern since it was plain to her viewers that she intended threats to be called to BCHS. Thus, the off-



campus nature of F.M.'s speech does not affect the BCHS' ability to punish her for it.

**C. This Court should provide deference to Tran's decision to suspend F.M.**

The Supreme Court has repeatedly held that courts should provide deference to the decisions of school administrators. Understanding the unique position of school administrators, the Court has "cautioned courts in various contexts to resist substituting their own notions of sound educational policy for those of the school authorities which they review." *Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings Col. Of Law v. Martinez*, 561 U.S. 661, 686 (2010). In fact, the Court has made clear that the public education system "*relies* necessarily upon the discretion and judgement of school administrators and school board members." *Wood v. Strickland*, 420 U.S. 308, 326 (1975) (emphasis added).

Thus, courts should respect the role of school administrators and defer to administrators' decisions on student speech so long as the judgement is "reasonable". *Norris ex rel. A.M. v. Cape Elizabeth Sch. Dist.*, 969 F.3d. 12, 31 (1st Cir. 2020). Given F.M.'s active call for threats against the school, the public medium, and the concerning nature of the threats, Tran acted reasonably by forecasting disruption at the school and suspending F.M.

**CONCLUSION**

For the preceding reasons, the Plaintiff has failed to demonstrate a likelihood she will succeed on the merits. For that reason, the lower court decision should be affirmed.

## Applicant Details

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## Applicant Education

BA/BS From **University of Virginia**  
 Date of BA/BS **May 2021**  
 JD/LLB From **Stanford University Law School**  
[http://www.nalplawsonline.org/ndlsdir\\_search\\_results.asp?lscd=90515&yr=2011](http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=90515&yr=2011)  
 Date of JD/LLB **June 16, 2024**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **Stanford Technology Law Review**  
**Stanford Law Review**  
 Moot Court Experience **No**

## Bar Admission

### **Prior Judicial Experience**

Judicial Internships/Externships	<b>Yes</b>
Post-graduate Judicial Law Clerk	<b>No</b>

### **Specialized Work Experience**

### **Recommenders**

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**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

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June 12, 2023

The Honorable Judge Jamar K. Walker  
U.S. District Court for the  
Eastern District of Virginia  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year at Stanford Law School and write to apply to the 2024-2025 clerkship with you in the Western District of Virginia. I grew up in Clarke County, Virginia, attended the University of Virginia, and am extremely excited to return to Virginia to clerk and practice law. My extensive personal ties to Virginia make me particularly invested in clerking with you.

Enclosed please find my resume, references, law school transcript, and writing sample for your review. Professors Diego Zambrano, Elizabeth Reese, and James Sonne are providing letters of recommendation to support my application. I welcome the opportunity to further discuss my qualifications and interest; thank you for your consideration.

Sincerely,



Katherine Viti

## KATHERINE VITI

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### EDUCATION

#### Stanford Law School

Stanford, CA

J.D., expected June 2024

Journals: *Stanford Law Review* (Vol. 76: Articles Editor, Vol. 75: Member Editor); *Stanford Technology Law Review* (Vol. 26: Senior Articles Editor, Vol. 25: Member Editor)

#### University of Virginia

Charlottesville, VA

B.A. in Political Philosophy, Policy, and Law; Slavic Languages and Literature; minor in English, May 2021

Honors: High Distinction in Political Philosophy, Policy, and Law, Dean's List (all eligible semesters), Raven Society; Pertzoff Prize in Russian Studies; Echols Scholar

Thesis: "The Legal Age of Majority and Equal Citizenship"

Activities: Jefferson Literary and Debating Society; Program on Constitutionalism and Democracy; UVA in Oxford, London School of Economics International Summer School; Books Behind Bars (Student Facilitator)

### EXPERIENCE

**U.S. Department of State, Office of the Legal Advisor**, Washington, DC *Extern*, September – December 2023

**Akin Gump Strauss Hauer & Feld LLP**, Los Angeles, CA

*Summer Associate*, June – August 2023

#### Stanford Law School

##### Research Assistant, Professor Erik Jensen

*Research Assistant*, April 2023- present

Edited draft Rwandan law textbook. Worked with American and Rwandan legal academics. Assisted in bringing book to publication.

##### Religious Liberty Clinic

*Clinic Student*, April – June 2023

Counseled client on religious liberty issues related to access to education. Wrote 9th Circuit reply brief in *Guardado v. State of Nevada* (litigation on behalf of former inmate racially discriminated against and prevented from practicing his religion). Developed advocacy plan to advance religious accommodations awareness in healthcare settings. Researched religious liberty and other legal issues and worked closely with teams and partners in completion of all these projects.

##### Trends in Global Judicial Reform Policy Lab

*Teaching/Research Assistant*, June 2022 – present

Conducted literature review on judicial vetting. Scheduled and managed visits of four foreign Supreme or Constitutional Court Justices to Stanford. Wrote syllabus and managed logistics of weekly seminar with 18 students. Assisted with design of research questionnaire and managed research trip to Bogota to interview judges. Oversaw creation of website to present findings.

##### Supreme Court of Rwanda, Kigali, Rwanda

*Law Clerk to the Chief Justice*, June – August 2022

Researched virtual criminal hearing guidelines in jurisdictions worldwide. Served on committee and wrote draft remote hearing guidelines for judiciary of Rwanda. Drafted memorandum on comparative transitional justice responses to mass atrocities.

##### Charlottesville Debate League, Charlottesville, VA

*Outreach Chair/Teacher*, September 2018 – May 2021

Taught public forum debate and impromptu speaking to middle schoolers. Implemented program by working with administrators in local school system. Adapted program to be conducted virtually during COVID.

#### University of Virginia

##### Echols Program

*Advisory Committee*, March 2019 – May 2021

Created and distributed programming for admitted students, including panels, tours, and personalized visits; transitioned programming to be virtual during COVID. Managed student team and social media. Served on Echols Council and on Advisory Board with faculty, staff, students, and alumni governing long-term future of program. Served as Head Ambassador and Chair of Recruitment from May 2019 through April 2021.

##### Maxine Platzer Lynn Women's Center Free Legal Clinic

*Legal Intern*, May – August 2020

Provided administrative support to attorneys in free legal consultations on issues including contract, family, and property law. Scheduled clients and attorneys by phone and email. Adapted clinic to be virtual during COVID and provided COVID-specific legal resources.

##### Book Traces Project

*Managing Research Assistant*, October 2018 – May 2019

Researched and compiled data on library collections. Organized site visits, handled rare books, and led research trips.

### ADDITIONAL INFORMATION

Languages: French (intermediate low); Russian (advanced low);

Interests: travel, particularly cross-country road trips; concerts; cooking

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**RECOMMENDERS**

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**REFERENCES**

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Maxine Platzer Lynn Women's Center at the University of Virginia  
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Law Unofficial Transcript

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Print Date: 06/09/2023

----- Academic Program -----

Program : Law JD  
09/20/2021 : Law (JD)  
Plan  
Status Active in Program

----- Beginning of Academic Record -----

2021-2022 Autumn

Course	Title	Attempted	Earned	Grade	Equiv
LAW 201	CIVIL PROCEDURE I	5.00	5.00	H	
Instructor:	Zambrano, Diego Alberto				
LAW 205	CONTRACTS	5.00	5.00	H	
Instructor:	Nyarko, Julian				
LAW 219	LEGAL RESEARCH AND WRITING	2.00	2.00	P	
Instructor:	Handler, Nicholas A				
LAW 223	TORTS	5.00	5.00	P	
Instructor:	Mello, Michelle Marie Studdert, David M				
LAW 240J	DISCUSSION (1L): RELIGION, IDENTITY AND LAW	1.00	1.00	MP	
Instructor:	Sonne, James Andrew				
LAW TERM UNITS:	18.00	LAW CUM UNITS:	18.00		

2021-2022 Winter

Course	Title	Attempted	Earned	Grade	Equiv
LAW 203	CONSTITUTIONAL LAW	3.00	3.00	H	
Instructor:	Meyler, Bernadette				
LAW 207	CRIMINAL LAW	4.00	4.00	P	
Instructor:	Weisberg, Robert				
LAW 224A	FEDERAL LITIGATION IN A GLOBAL CONTEXT: COURSEWORK	2.00	2.00	P	
Instructor:	Valeska, Tyler Breland				
LAW 807E	POLICY PRACTICUM: GLOBAL JUDICIAL REFORMS	2.00	2.00	MP	
Instructor:	Zambrano, Diego Alberto				
LAW 7846	ELEMENTS OF POLICY ANALYSIS	1.00	1.00	MP	
Instructor:	Brest, Paul Herman, Luciana Louise MacCoun, Robert J				
LAW TERM UNITS:	12.00	LAW CUM UNITS:	30.00		

2021-2022 Spring

Course	Title	Attempted	Earned	Grade	Equiv
LAW 217	PROPERTY	4.00	4.00	P	
Instructor:	Thompson Jr, Barton H				
LAW 224B	FEDERAL LITIGATION IN A GLOBAL CONTEXT: METHODS AND PRACTICE	2.00	2.00	P	
Instructor:	Valeska, Tyler Breland				
LAW 5013	INTERNATIONAL LAW	4.00	4.00	P	
Instructor:	Weiner, Allen S.				
LAW 7013	GENDER, LAW, AND PUBLIC POLICY	3.00	3.00	P	
Instructor:	Russell, Margaret Mary				
LAW TERM UNITS:	13.00	LAW CUM UNITS:	43.00		

2022-2023 Autumn

Course	Title	Attempted	Earned	Grade	Equiv
LAW 3504	U.S. LEGAL HISTORY	3.00	3.00	H	
Instructor:	Ablavsky, Gregory R				
LAW 5044	THIRD WORLD APPROACHES TO INTERNATIONAL LAW, BORDERS, AND MIGRATION	2.00	2.00	H	
Instructor:	Achieme, Emily T				
LAW 7030	FEDERAL INDIAN LAW	3.00	3.00	P	
Instructor:	Reese, Elizabeth Anne				
LAW 7036	LAW OF DEMOCRACY	3.00	3.00	P	
Instructor:	Persily, Nathaniel A.				
LAW TERM UNITS:	11.00	LAW CUM UNITS:	54.00		

2022-2023 Winter

Course	Title	Attempted	Earned	Grade	Equiv
LAW 400	DIRECTED RESEARCH	3.00	0.00		
Instructor:	Spaulding, Norman W.				
LAW 2401	ADVANCED CIVIL PROCEDURE	3.00	3.00	P	
Instructor:	Zambrano, Diego Alberto				
LAW 5801	LEGAL STUDIES WORKSHOP	1.00	1.00	MP	
Instructor:	Meyler, Bernadette				
LAW 7001	ADMINISTRATIVE LAW	4.00	4.00	P	
Instructor:	Freeman Engstrom, David				

Information must be kept confidential and must not be disclosed to other parties without written consent of the student.

Worksheet - For office use by authorized Stanford personnel Effective Autumn Quarter 2009-10, units earned in the Stanford Law School are quarter units. Units earned in the Stanford Law School prior to 2009-10 were semester units. Law Term and Law Cum totals are law course units earned Autumn Quarter 2009-10 and thereafter.

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Law Unofficial Transcript

Name : Viti,Katherine L  
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LAW TERM UNITS: 8.00      LAW CUM UNITS: 62.00

2022-2023 Spring					
Course		Title	Attempted	Earned	Equiv
LAW	918A	RELIGIOUS LIBERTY CLINIC: PRACTICE	4.00	0.00	
Instructor:		Huq, Zeba Azim Sonne, James Andrew			
LAW	918B	RELIGIOUS LIBERTY CLINIC: CLINICAL METHODS	4.00	0.00	
Instructor:		Huq, Zeba Azim Sonne, James Andrew			
LAW	918C	RELIGIOUS LIBERTY CLINIC: CLINICAL COURSEWORK	4.00	0.00	
Instructor:		Huq, Zeba Azim Sonne, James Andrew			
LAW TERM UNITS:	0.00	LAW CUM UNITS:	62.00		

END OF TRANSCRIPT

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## Katherine Louise Viti

06/02/2021

## Degrees Conferred

Confer Date: 05/23/2021  
Degree: Bachelor of Arts  
Degree Honors: with High Distinction  
Major: Interdisciplinary - Political Philosophy, Policy, and Law  
Option: Distinguished Major  
Major: Slavic Languages and Literatures  
Minor: English

## Test Credits

Test Credits Applied Toward Arts &amp; Sciences Undergraduate

Transferred to Term 2017 Fall as  
BIOL 2100 IntroBio w/Lab:Cell & Genetics TE 4.00  
Repeated: Repeat-Include in GPA Only  
BIOL 2200 Intro Bio w/Lab: Orgnsm & Evol TE 4.00  
Repeated: Repeat-Include in GPA Only  
ENGL 1000T Non-UVa Transfer/Test Credit TE 3.00  
ENWR 1000T Non-UVa Transfer/Test Credit TE 0.00  
HIST 2000T Non-UVa Transfer/Test Credit TE 3.00  
MATH 1310 Calculus I TE 4.00  
MATH 1320 Calculus II TE 4.00  
PLAP 1000T Non-UVa Transfer/Test Credit TE 3.00  
STAT 2120 Intro to Statistical Analysis TE 3.00

Test Credit Total:

20.00

## Transfer Credits

Transfer Credit from Lord Fairfax Cmty College  
Applied Toward Arts & Sciences Undergraduate Program

Incoming Course  
HIS DE 122 US History II DE  
Transferred to Term 2017 Fall as  
HIST 1000T Non-UVa Transfer/Test Credit PT 3.00  
Incoming Course  
HIS DE 121 US History I DE  
Transferred to Term 2017 Fall as  
HIST 1000T Non-UVa Transfer/Test Credit PT 3.00  
Incoming Course  
FRE 212 Intermediate French Conversati  
Transferred to Term 2017 Fall as  
FREN 2000T Non-UVa Transfer/Test Credit PT 3.00  
Incoming Course  
FRE 211 Intermediate French Conversati  
Transferred to Term 2017 Fall as  
FREN 2000T Non-UVa Transfer/Test Credit PT 3.00  
Incoming Course  
FRE 112 Conversation in French II  
Transferred to Term 2017 Fall as  
FREN 2000T Non-UVa Transfer/Test Credit PT 3.00  
Incoming Course  
FRE 111 Conversation in French I  
Transferred to Term 2017 Fall as  
FREN 2000T Non-UVa Transfer/Test Credit PT 3.00  
Incoming Course  
ENG 112 Writing  
DE

Transferred to Term 2017 Fall as  
ENWR 1000T Non-UVa Transfer/Test Credit PT 3.00

Incoming Course  
ENG 111 Writing  
DE  
Transferred to Term 2017 Fall as  
ENWR 1000T Non-UVa Transfer/Test Credit PT 3.00

Incoming Course  
BIO 102 General Biology II  
Transferred to Term 2017 Fall as  
BIOL 2200 Intro Bio w/Lab: Orgnsm & Evol PT 4.00  
Repeated: Repeat-Include in Credit Only

Incoming Course  
BIO 101 General Biology I  
Transferred to Term 2017 Fall as  
BIOL 2100 IntroBio w/Lab:Cell & Genetics PT 4.00  
Repeated: Repeat-Include in Credit Only

Transfer Credit Total: 32.00

Transfer Credit from London Schl of Econ & Pol Sci  
Applied Toward Arts & Sciences Undergraduate Program

Incoming Course  
IR 130 Pol Theory & Intnt'l Politics  
Transferred to Term 2019 Summer as  
PPL 3000T Non-UVa Transfer/Test Credit TM 3.00

Transfer Credit Total: 3.00

## Beginning of Undergraduate Record

## 2017 Fall

School: College & Graduate Arts & Sci  
Major: Arts & Sciences Undeclared  
COLA 1500 College Advising Seminars A 1.0  
Course Topic: Knights Ladies in Middle Ages  
CS 1010 Intro to Information Tech A+ 3.0  
ENGL 3810 Hist of Lit in English I A+ 3.0  
ENLT 2511 Masterpieces of English Lit A 3.0  
Course Topic: Putting Austen in her Place  
RELC 2050 Rise of Christianity A+ 3.0  
RUSS 1010 First-Year Russian I A+ 4.0  
Curr Credits 17.0 Grd Pts 68.000 GPA 4.000  
Cuml Credits 17.0 Grd Pts 68.000 GPA 4.000  
Honor: Dean's List

## 2018 Spring

School: College & Graduate Arts & Sci  
Major: Arts & Sciences Undeclared  
ENCW 2560 Intro Fiction Writing - Themed A 3.0  
Course Topic: Unearthing Fiction  
ENGL 3820 History of Lit in English II A 3.0  
PHIL 2660 Philosophy of Religion A 3.0  
RUSS 1020 First-Year Russian A 4.0  
USEM 1580 University Seminar A+ 2.0  
Course Topic: Les Misérables Today  
Curr Credits 15.0 Grd Pts 60.000 GPA 4.000  
Cuml Credits 32.0 Grd Pts 128.000 GPA 4.000  
Honor: Dean's List

## 2018 Fall

School: College & Graduate Arts & Sci  
Major: Arts & Sciences Undeclared

**Katherine Louise Viti**

06/02/2021

ENCW	3610	Intermediate Fiction Writing	A	3.0	
PLAP	3400	American Political Economy	A	3.0	
PLPT	3020	Modern Political Thought	A-	3.0	
RUSS	2010	Second-Year Russian I	A	4.0	
RUTR	3350	19th-Cent Russian Literature	A	3.0	
Curr Credits	16.0	Grd Pts	63.100	GPA	3.944
Cuml Credits	48.0	Grd Pts	191.100	GPA	3.981
Honor:		Dean's List			

## 2019 Spring

School:	College & Graduate Arts & Sci					
Major:	Interdisciplinary - Political Philosophy, Policy, and Law					
Major:	Slavic Languages and Literatures					
Minor:	English					
COMM	3410	Commercial Law I			A	
ENAM	3240	Faulkner			A	
ENRN	3220	Shakespeare Tragedies Romances			A	
PLCP	3110	The Politics of Western Europe			A-	
RUSS	2020	Second-Year Russian			A	
Curr Credits	16.0	Grd Pts	63.100	GPA	3.9	
Cuml Credits	64.0	Grd Pts	254.200	GPA	3.9	
Honor:	Dean's List					

## 2019 Summer

School:	College & Graduate Arts & Sci			
Major:	Interdisciplinary - Political Philosophy, Policy, and Law			
Major:	Slavic Languages and Literatures			
Minor:	English			
PLIR	3620	Politics of the EU	A	3.0
ZFOR	3503	International Study	N	0.0
Course Topic:	Study in England, Oxford			
ZFOR	3506	International Study	N	0.0
Course Topic:	Education Abroad Program			
Curr Credits	3.0	Grd Pts	12.000	GPA 4.000
Cuml Credits	67.0	Grd Pts	266.200	GPA 3.973

## 2019 Fall

School:	College & Graduate Arts & Sci					
Major:	Interdisciplinary - Political Philosophy, Policy, and Law					
Major:	Slavic Languages and Literatures					
Minor:	English					
ECON	2010	Principles of Econ: Microecon		A		3.0
HIST	5130	Global Legal History		A		3.0
PPL	2010	Morality, Law and the State		A		3.0
RUSS	3010	Third-Year Russian I		A		3.0
RUTR	2740	Tolstoy in Translation		A		3.0
Curr Credits	15.0	Grd Pts	60.000	GPA		4.000
Cuml Credits	82.0	Grd Pts	326.200	GPA		3.978
Honor:	Intermediate Honors					
	Dean's List					

## 2020 Spring

School:	College & Graduate Arts & Sci				
Major:	Interdisciplinary - Political Philosophy, Policy, and Law				
Major:	Slavic Languages and Literatures				
Minor:	English				
COMM	3420	Commercial Law II		A	3.0
PHIL	2780	Ancient Political Thought		A	3.0
PLPT	4500	Special Topics		A	3.0
Course Topic:	Conservative Political Thought				
RUSS	3020	Third-Year Russian		A	3.0
RUTR	3340	Books Behind Bars		A	4.0
Curr Credits	16.0	Grd Pts	64.000	GPA	4.000
Cuml Credits	98.0	Grd Pts	390.200	GPA	3.982

## 2020 Fall

School: College & Graduate Arts & Sci

Major:	Interdisciplinary - Political Philosophy, Policy, and Law				
Major:	Slavic Languages and Literatures				
Minor:	English				
ENGL	4580	Seminar in Literary Criticism		A+	3.0
Course Topic:	Feminist Theory				
PPL	4005	Thesis Preparation		CR	1.0
RELG	3485	Moral Leadership		A	3.0
RUSS	4010	Fourth-Year Russian I		A	3.0
SOC	2230	Criminology		A	3.0
Curr Credits	13.0	Grd Pts	48.000	GPA	4.000
Cuml Credits	111.0	Grd Pts	438.200	GPA	3.984
Honor:	Raven Society				

## 2021 Spring

School:	College & Graduate Arts & Sci				
Major:	Interdisciplinary - Political Philosophy, Policy, and Law				
Option:	Distinguished Major				
Major:	Slavic Languages and Literatures				
Minor:	English				
HIUS	3753	History of Modern American Law		CR	3.0
PPL	4010	Research Seminar		A+	3.0
PPL	4500	Special Topics in PPL		CR	1.0
Course Topic:	Life After PPL				
RUSS	4020	Fourth-Year Russian		A	3.0
RUTR	3360	20th Century Russian Lit		CR	3.0
Curr Credits	13.0	Grd Pts	24.000	GPA	4.000
Cuml Credits	124.0	Grd Pts	462.200	GPA	3.984

End of Undergraduate Record

James Sonne  
Professor of Law  
Director, Religious Liberty Clinic  
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650-723-1422  
jsonne@law.stanford.edu

June 11, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend for a clerkship with you one of my standout clinic students from the spring 2023 quarter, Katherine Viti. Katherine is bright and curious, an excellent researcher and writer, and a team player who takes ownership to ensure first-rate work. She is also thoughtful and engaging, with a heart for the vulnerable and a fun sense of humor. Katherine would make a great law clerk.

I direct Stanford's Religious Liberty Clinic. Like any law school clinic, we teach students through representation of real clients in live disputes. But Stanford is unique in that our students enroll in clinic on a full-time basis; in other words, it is the only class a participating student takes in a given academic quarter. As for subject matter, we find that religious liberty offers unique opportunities that enable students to help clients in need while expanding their skills in a diverse and deeply human area—no matter their own political or ideological perspective.

Katherine was a full-time student in our clinic during the spring 2023 quarter. In clinic, Katherine was assigned several projects. The most demanding was an appellate reply brief involving the right of an inmate to access group religious practices at his prison. The case involves complex and delicate questions of constitutional law and procedure, and Katherine tackled the most thorny of these. Katherine mastered the (rather complicated) record, and researched and wrote the core sections of the brief to great effect. She also worked extremely hard, and was the reliable leader of the team to make sure everything was done right and well.

Katherine's other core project was an advocacy matter for a Jewish family navigating a religious accommodation request for their children at a local school. Katherine's work once again included excellent research and written advocacy, as well as thoughtful and comprehensive client counseling—with a keen eye to serving the client's goals within the range of options. With Katherine's foundational work, we are optimistic about our chances moving forward.

In seminar and clinic rounds sessions, Katherine also consistently demonstrated intellectual curiosity, academic and professional excellence, and a can-do attitude. She was an active and reflective participant, who enjoyed the respect of her peers. Katherine was particularly strong in conversations across difference, where she displayed the warmth and respectful dialogue we seek to foster in our clinic. Katherine was also previously enrolled in my first-year reading group on religion and the profession of law. She was a standout in that class as well.

I hope you have the chance to interview Katherine. Please let me know if you have questions or need more information. Thank you.

Sincerely,

/s/ James Sonne

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Diego A. Zambrano  
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June 11, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

It is with the greatest enthusiasm that I write to recommend Katherine Viti for a clerkship in your chambers. Katherine has been a fabulous student at Stanford Law School, displaying exceptional research and writing skills, independent thinking, and *ultra-competence*. I want to hammer this aspect of Katherine's legal package again and again: she is simply extremely on top of her work, carrying a full load of classes, serving as a teaching assistant, and as an editor of the *Stanford Law Review*. And she excels at all of these activities. Again, she exemplifies ultra-competence and is one of those students who can seemingly get everything done much quicker than her classmates because she is an incredibly hard worker. As her transcript shows, she has a solid record of several honors grades, including in Constitutional Law and my class of Civil Procedure. Even more, Katherine is heavily involved in activities related to international law. This is a terrific package. And it comes from a person with an interesting background in rural Virginia. I can attest to Katherine's accomplishments because I've personally seen her intelligence, determination, grit, and ability across a range of areas, including in her exam, class participation, and as a Teaching Assistant. I am convinced that Katherine would be a brilliant clerk.

Let me say something about Katherine's contributions as an *ultra-competent* Teaching Assistant. Last fall, I began planning the latest iteration of a comparative constitutional seminar on Global Judicial Reforms—a comparative survey of the most recent successful wave of judicial reforms around the world. As soon as I decided that, I knew Katherine would be at the top of my list for TAs. I felt that way not only because of her exceptional performance in my Civ Pro class, but also because she was one of the most thoughtful, professional, and committed students. Moreover, she had been the *best student* in the prior iteration of the policy lab, producing a magisterial research project on judicial reforms in Ecuador. She went way beyond what other students did, conducting a series of interviews of Ecuadorian legal actors, and writing a superb research paper.

As a TA, Katherine was simply impressive—always on top of assignments, available for students, deeply engaged with the material, and just brilliant. For example, even before the class started, I wanted to do a literature review and survey of previous works on the vetting of judges around the world. What, exactly, do countries do to verify competence and integrity of judicial candidates? To do so, I asked Katherine to compile anything she could find. Katherine's work product was excellent, heavily researched, clearly written, and raised questions that had not occurred to me. Katherine told me she loved digging into this material. She explored several databases in-depth and illuminated the field in ways I had not considered. Then, throughout our Policy Practicum, Katherine was extremely competent and well-liked by the students. She became the perfect TA in every way, preparing classes, inviting guest speakers, supervising the work of other students, and being an all-around aid to my teaching. I could not have taught that class without her.

Let me say another word about Katherine's *ultra-competence*—she managed to organize a series of speaking engagements by foreign judges, help me plan a trip to Colombia with our seminar, and serve as articles editor at the *Stanford Law Review*. She is simply one of those students who can get anything done in time. Of course, my first impression of Katherine's *ultra-competence* came from our Civil Procedure class. As you may know, Civil Procedure provides instruction in some of the most important and foundational concepts in our litigation system. I therefore have a unique view of Katherine's aptitude for litigation and the way our judiciary operates. I can tell you without hesitation that she is a superb law student. Katherine's exam was outstanding, placing at the top of the class, easily winning her an Honors grade and was a contender for the best exam in the class. Katherine was one of the only students to successfully spot all important issues and untangle the complex web of facts and arguments that I presented in the exam. Her exam exemplified Katherine's clear and analytical writing.

Setting aside her obvious high level of competence, let me also say something about Katherine's professionalism. She is easy to talk to, professional and respectful, but also *interesting* and *interested* in the law. She is collegial and a wonderful person to have in a classroom. Always on time and always respectful. She is an incredibly hard worker. A quick look at her CV exhibits a dozen activities that she has been involved in over the last two years.

Katherine's personality and professional package is rounded out by a deep devotion to international legal issues. Katherine spent her first summer of law school in Rwanda, designing a new regime for the use of legal technology in Rwandan courts. She spent her Spring Break with our class in Colombia, interviewing dozens of judges. And that's just the beginning. Katherine's CV exhibits this: major in Russian, research assistant for Professor Erik Jensen on Rwandan legal issues, and several classes on international law. When I run into Katherine in the halls, we can debate about international law in the context of the Russia-Ukraine war, or we can move on to discuss recent separation of powers clashes in South America.

Diego Zambrano - dzambrano@law.stanford.edu

I think Katherine has built such a love for international issues because her background is so deeply American. She's fundamentally a Virginian, hailing from a rural area in the state. She attended UVa for her undergraduate studies, where she maintained a strong connection to her family in Virginia. I've spoken with her about her weak academic performance in the Spring Quarter of her 1L year—she told me it was due to her grandfather's death in a car accident. I think that quarter was not representative of the excellent work I have come to expect from her. Katherine's profoundly American/Virginian background instilled in her the foundational value of *hard work*. I've seen her as a TA and student and you can trust me when I say this: she is fully devoted to anything she works on.

Let me say a final word about Katherine: she is fundamentally pragmatic and non-ideological. Because she grew up in a conservative family but came to embrace different values, she has maintained an open mind across political divisions. I have found that she is very reasonable, open to disagreement, fundamentally level-headed, and committed to hearing from people she disagrees with. Yes, she is smart. But, more importantly, she is a *smart listener*.

The bottom line is this: Katherine is a highly talented student; deeply passionate about international legal work; professional and intelligent; as well as the hardest worker you will find. I am confident she would be a first-rate clerk in your chambers. Without hesitation, I give her my strongest recommendation.

Sincerely,

/s/ Diego A. Zambrano

Diego Zambrano - dzambrano@law.stanford.edu

**JENNY S. MARTINEZ**Richard E. Lang Professor of Law  
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## Stanford Grading System

Dear Judge:

Since 2008, Stanford Law School has followed the non-numerical grading system set forth below. The system establishes “Pass” (P) as the default grade for typically strong work in which the student has mastered the subject, and “Honors” (H) as the grade for exceptional work. As explained further below, H grades were limited by a strict curve.

<b>H</b>	Honors	Exceptional work, significantly superior to the average performance at the school.
<b>P</b>	Pass	Representing successful mastery of the course material.
<b>MP</b>	Mandatory Pass	Representing P or better work. (No Honors grades are available for Mandatory P classes.)
<b>MPH</b>	Mandatory Pass - Public Health Emergency*	Representing P or better work. (No Honors grades are available for Mandatory P classes.)
<b>R</b>	Restricted Credit	Representing work that is unsatisfactory.
<b>F</b>	Fail	Representing work that does not show minimally adequate mastery of the material.
<b>L</b>	Pass	Student has passed the class. Exact grade yet to be reported.
<b>I</b>	Incomplete	
<b>N</b>	Continuing Course	
<b>[blank]</b>		Grading deadline has not yet passed. Grade has yet to be reported.
<b>GNR</b>	Grade Not Reported	Grading deadline has passed. Grade has yet to be reported.

In addition to Hs and Ps, we also award a limited number of class prizes to recognize truly extraordinary performance. These prizes are rare: No more than one prize can be awarded for every 15 students enrolled in a course. Outside of first-year required courses, awarding these prizes is at the discretion of the instructor.

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\* The coronavirus outbreak caused substantial disruptions to academic life beginning in mid-March 2020, during the Winter Quarter exam period. Due to these circumstances, SLS used a Mandatory Pass-Public Health Emergency/Restricted Credit/Fail grading scale for all exam classes held during Winter 2020 and all classes held during Spring 2020.

For non-exam classes held during Winter Quarter (e.g., policy practicums, clinics, and paper classes), students could elect to receive grades on the normal H/P/Restricted Credit/Fail scale or the Mandatory Pass-Public Health Emergency/Restricted Credit/Fail scale.

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The five prizes, which will be noted on student transcripts, are:

- the Gerald Gunther Prize for first-year legal research and writing,
- the Gerald Gunther Prize for exam classes,
- the John Hart Ely Prize for paper classes,
- the Hilmer Oehlmann, Jr. Award for Federal Litigation or Federal Litigation in a Global Context, and
- the Judge Thelton E. Henderson Prize for clinical courses.

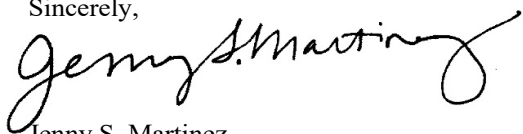
Unlike some of our peer schools, Stanford strictly limits the percentage of Hs that professors may award. Given these strict caps, in many years, *no student* graduates with all Hs, while only one or two students, at most, will compile an all-H record throughout just the first year of study. Furthermore, only 10 percent of students will compile a record of three-quarters Hs; compiling such a record, therefore, puts a student firmly within the top 10 percent of his or her law school class.

Some schools that have similar H/P grading systems do not impose limits on the number of Hs that can be awarded. At such schools, it is not uncommon for over 70 or 80 percent of a class to receive Hs, and many students graduate with all-H transcripts. This is not the case at Stanford Law. Accordingly, if you use grades as part of your hiring criteria, we strongly urge you to set standards specifically for Stanford Law School students.

If you have questions or would like further information about our grading system, please contact Professor Michelle Anderson, Chair of the Clerkship Committee, at (650) 498-1149 or [manderson@law.stanford.edu](mailto:manderson@law.stanford.edu). We appreciate your interest in our students, and we are eager to help you in any way we can.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, reading "Jenny S. Martinez". The signature is fluid and cursive, with the first name "Jenny" being the most prominent.

Jenny S. Martinez  
Richard E. Lang Professor of Law and Dean

Updated May 2020

Elizabeth Reese  
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June 11, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I write with an enthusiastic recommendation that you hire Katherine Viti, Stanford Law JD24, for a clerkship position in your chambers. Katherine is smart, dedicated, and incredibly focused. She will make a wonderful clerk.

I first met Katherine when she enrolled in my Federal Indian Law class at Stanford Law School. Right away, it was clear that she was incredibly engaged in the course. She had fantastic comments in class and was consistently well-prepared. She stopped by my office hours a few times to discuss the material. It was clear to me that Katherine's brain is always going. She is very analytical and passionate at the same time. She brings an energizing kind of focus to the way she asks questions about the material. It's an infectious energy and love for the law and all the reasons that it matters. I have no doubt that that kind of energy, focus, and enthusiasm will be an asset in any clerkship chambers.

Beyond her work in my class, I have met with Katherine to talk about both her writing projects and my own. She decided to write a research paper for her U.S. legal history course on the intersection of indigenous law issues and international borders. She reached out to me to talk about the project, and our conversation was fantastic. Her questions were thoughtful, and she approached the topic with a noteworthy amount of both humility and infectious curiosity. It was during this conversation that I learned that Katherine is interested in legal academia. She dreams of one day being a civil procedure professor. This seems to fit perfectly. She has the kind of excitement combined with an analytical disposition that makes some of the best civil procedure professors so good at their job. It's that infectious energy for how a system works, why it works, and the intricacies as well as rationales behind such systems.

I have also gotten the opportunity to work with Katherine on some of my own writing. She was assigned as the primary editor of a piece of mine with the *Stanford Law Review*. It was a fortuitous pairing, since Katherine is not only a joy to work with, but it also allows me to speak to her ability to provide thoughtful and careful feedback on writing and legal ideas. She has worked incredibly hard on the piece, and I was so impressed by the comments she provided. I agreed with most of them, which is truly a compliment! She also expressed her critical feedback in such a careful but clear way—exactly the kind of thing that will make her excellent at writing bench memos.

I strongly encourage you to hire Katherine. She will be an asset to your chambers—an injection of excitement and focus. I trusted her to edit my writing, and she has continually impressed me with not only her writing edits but also her substantive feedback. If you decide to trust her with your writing, I have no doubts you will feel the same.

Sincerely,

/s/ Elizabeth Reese

Elizabeth H. Reese - ereese@law.stanford.edu



**KATHERINE VITI**

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**WRITING SAMPLE**

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I prepared this document as part of my work clerking for Chief Justice Ntezilyayo of the Supreme Court of Rwanda. The research assignment was to investigate international best practices for virtual hearings, particularly in the criminal context. After drafting this memo summarizing my research and the scope of possible issues to consider, I worked on a committee with the Director of IT for the Rwandan Judiciary and a lower court judge to develop these recommendations into text to be inserted into the Rwandan civil code governing the operation of the judiciary. Several months after my time at the Court ended, [this document](#) was issued summarizing the current state of technology use in the Rwandan judiciary for the public. I realize that this memo is a very non-traditional writing sample, so I hope the context provided here is helpful in evaluating it as a document. I prepared this document entirely on my own, and I am submitting it with the permission of Chief Justice Ntezilyayo.

**KATHERINE VITI**

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Katherine Viti

Research Memo: Main Challenges Pertaining to Due Process and Remote Court Hearings for Criminal Matters in Rwanda

Prepared for Chief Justice Ntezilyayo

June 10, 2022

**Introduction:**

Many countries adopted some virtual hearings as part of their emergency response to the COVID-19 Pandemic, beginning in 2020. Initially, these measures were only stopgaps, but there are advantages to remote hearings that make them attractive for continued use. These advantages include:

- Increased ease, efficiency, and effectiveness in dealing with transnational crime through increased international cooperation
- Shielding sensitive victims and witnesses, both for their personal security and to prevent their re-traumatization
- Transparency and increased public access to the justice system (if proceedings are recorded or available in real time to the public)
- Increased speed and efficiency in access to justice, particularly in contexts where speed is critical (such as domestic violence and child welfare)
- Overcoming geographical access to justice barriers within a nation (so witnesses don't have to engage in difficult/hard/expensive travel to access the court system)

Rwanda has long recognized the advantages of remote hearings and has been using them in some form since around 2010. However, particularly in the criminal context, where I focus here, there are serious concerns with conducting remote hearings. These concerns include:

- Ensuring the defendant's due process rights are upheld, particularly regarding adequate and confidential access to counsel before, during, and after proceedings
- Concerns about witnesses, victims, or defendants testifying from unsafe or coercive environments such that it alters their testimony (such as when testifying from prison, in a public place, or in a home shared with an abuser)
- Technology access issues for testifying individuals, including both the relevant devices and internet access
- Difficulty presenting complex evidence over technology so as to allow all involved to view it properly (such as exhibits, large documents, physical evidence, etc)
- Difficulty ensuring security and maintaining order in the proceeding
- Difficulty accessing digital proceedings for people who are illiterate, disabled, or do not speak the language the proceeding is in

Rwanda can mitigate some of these concerns by adopting a nationwide policy regarding the use of remote hearings in criminal matters. To be clear, Rwanda has already implemented some of these recommendations, but I am including them all here to be as comprehensive as possible. This policy should include the answers to some key questions below about the scope and scale at which the use of remote procedures is desirable, as well some best practices for the

**KATHERINE VITI**

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actual conduct of the hearings themselves. These questions and best practices should include the following:

- What kinds of hearings should be done virtually? What kinds should remain only in-person?
- Should all hearings of this type be virtual, or should parties have to request it?
  - Should the accused have to consent in order for the hearing to be virtual? What if the witness requests a virtual hearing?
- Should hearings be completely virtual, or only partially virtual, where one party appears virtually and the rest appear in person?
- Best practices regarding technology: the judiciary should create a protocol addressing:
  - How to test the technology in advance of the hearing
  - What to do if the technology fails during the hearing, including common troubleshooting fixes, the role of any IT staff that might be available, or when to reschedule the hearing
  - How the technology will keep the hearing secure, including issues of unauthorized recording and of public access to the relevant kinds of hearings
  - How to use technology to present evidence
  - How the technology will interact with the pre-existing e-court system
  - When audio vs. video technology is appropriate
- Best practices for judges regarding:
  - How to use the technology
  - How to maintain order/sanction bad behavior in a digital courtroom
- Best practices for prisons regarding:
  - How to ensure prisoners have adequate, private interaction with counsel before, during, and after their hearing
  - How to minimize the coercive nature of the background prison environment during the hearing and provide some privacy
  - Technology maintenance and access
- Handbook for prosecutors to distribute to victims/witnesses (particularly women, children, and other vulnerable parties) that clearly explains:
  - In which circumstances it is possible for them to appear remotely and how they can request to do so
  - How to log on and access the hearing
  - Where to access the technology necessary for the hearing
  - How their role in the hearing will work
- Clear advertisement to the public regarding whether hearings are accessible and how to access them

This analysis of the core questions and best practices was developed by looking at similar work done by jurisdictions around the world, including in various US states, the EU, Australia, South Africa, Nigeria, and countries of the Middle East and North Africa. While Rwanda may face more logistical and resource-based challenges than some of the nations whose example has been considered, it is important to note that no jurisdiction I read about has resolved the resource issues called up by virtual hearings, including particularly those surrounding citizens' access to

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the technology necessary to participate. In fact, based on my conversations with Fred Gashemeza,<sup>1</sup> Rwanda is ahead of the game in implementing many of these solutions, particularly in regard to the actual technology infrastructure.

To deal with the resource challenges, I recommend maintaining a narrower scope of remote hearings, and scaling up as access to technology improves, so as to be able to focus on building a procedure that works well and respects the rights and roles of every stakeholder involved. The citizen technology access issue is one that many branches of government and civil society are ultimately invested in resolving and might be an opportunity for the judiciary to partner with other parts of society or to create international partnerships, whereas the due process and justice issues are essentially legal and can only be dealt with by the judiciary. Therefore, the judiciary should focus its resources on the issues that are uniquely within its purview to resolve, and search for partners to resolve issues that affect other aspects of society.

This report functions by progressing systematically through the series of questions and issues to consider in setting up a system for virtual criminal hearings. In creating this progression, I relied heavily on guidance provided by the UN.<sup>2</sup> As I address each issue in turn, I will explain how a different jurisdiction has handled that question, how Rwanda has handled or is handling it, and make recommendations for the future.

**Developing Recommended Best Practices for Rwanda:**

I. Ensure Procedures Comply with In-Person Due Process Requirements from Rwanda's Overall Governing Law

In considering best practices to adopt for Rwanda, UN Peacekeeping documentation<sup>3</sup> recommends that countries ensure that their constitutions and procedural laws allow for virtual hearings (or at least do not mandate in-person appearances or contain any other requirements that can only be fulfilled physically). In some countries in the Middle East and North Africa (MENA), nations are also trying to take into account their obligations under the International Covenant on Civil and Political Rights (ICCPR).<sup>4</sup> The primary obligations at issue under the ICCPR are those under Article 9 (the right to be free from arbitrary arrest and detention) and Article 14 (the right to a fair trial).<sup>5</sup> In Egypt, like in Rwanda, remote hearings are often used in the pretrial detention phase. Advocates in Egypt raised concerns regarding “depriv[ing] detainees of the regular connectivity to the outside world” that goes along with attending hearings in person, and reforms to Egypt’s process continue.<sup>6</sup> Morocco and Lebanon have both had major technology issues in the implementation of remote hearings; in Lebanon sometimes the

<sup>1</sup> Mr. Gashemeza is the Director of IT for the Judiciary of Rwanda.

<sup>2</sup> Justice and Corrections Service, U.N. Office of Rule of Law and Security Institutions, Department of Peace of Operations, Remote Hearing Toolkit (2020), [https://peacekeeping.un.org/sites/default/files/unitar-rolsi\\_remote\\_hearing\\_toolkit\\_2020.pdf](https://peacekeeping.un.org/sites/default/files/unitar-rolsi_remote_hearing_toolkit_2020.pdf).

<sup>3</sup> *Id.* at 9.

<sup>4</sup> Mai El-Sadany, Madeleine Hall, & Yasmin Omar, *Remote Hearings, Detention, and the Pandemic in MENA*, TAHIR INSTITUTE FOR MIDDLE EAST POLICY (Apr. 23, 2021), <https://timep.org/commentary/remot-hearings-detention-and-the-pandemic-in-the-mena-region/>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

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connections are so bad that the judge calls in on a mobile phone.<sup>7</sup> These tech issues create real due process violations that threaten the rights protected under the ICCPR.

The European Union is skeptical of the practice of remote hearings entirely because of these due process concerns. The EU has significant additional human rights protections built into it, including rigorous protections for the accused. Concerns raised by European scholars about remote hearings include the problems experienced by the MENA countries, as well as additional concerns about the way in which in-person hearings and testimony better enable hearings to serve their fact-finding purpose. Body language and other behavioral cues that provide important information during hearings are much harder, if not impossible, to judge from a remote hearing, and this lack of physical information is of great concern to Europeans.<sup>8</sup> Additionally, the physical courtroom projects “a certain spatial materiality of justice” that is important to defendants’ feeling of having their day in court, as well as to the proceedings themselves.<sup>9</sup> Furthermore, the EU is very concerned about how to measure judicial outcomes, and there is concern about developing metrics to assess the success of remote hearings.<sup>10</sup>

In Rwanda, these concerns are still relevant, but more attention should be paid to the obligations Rwanda owes its criminal defendants under its own internal criminal procedure code. Rwanda has been conducting some remote hearings for many years now, but considering the Law Relating to Criminal Procedure’s requirements may allow bounds to be put on what kinds of hearings can and cannot be conducted online.<sup>11</sup> Certain aspects of criminal investigations seem to require an in-person component to the proceedings, such as the requirement in Articles 18, 51, and 72<sup>12</sup> for witnesses to fingerprint their statements after giving them, but these requirements are outside the scope of consideration for actual hearings. However, they indicate that there might be some difficulty in making the process entirely remote. Regarding requirements for hearings that may require a judge or the court to be in person in some capacity, Article 76 requires a judge at a pretrial detention hearing “to consider the living conditions and the health of the accused person.”<sup>13</sup> Rwanda has been using remote hearings for pretrial detention for a long time, and they may be the most useful context for remote hearings, by actually accelerating the process and therefore protecting the health and wellbeing of the accused person.

Remote hearings must be sure to comply with Article 125, which requires the preliminary hearing to be in camera (private).<sup>14</sup> This requirement presents its own challenges online, mostly regarding privacy. Mr. Gashemeza told me that Rwanda does its best to ensure privacy by distributing links to hearings on an as-needed basis, but security remains a challenge. Article 125 does however explicitly allow audio-visual testimony if a person cannot be present at the hearing, and Article 130 explicitly allows for electronic hearings, so moving in this direction is legally sanctioned.<sup>15</sup> Another potential security risk comes from the provisions of Article 136,

<sup>7</sup> *Id.*

<sup>8</sup> Kresimir Kamber, *The Right to a Fair Online Hearing*, 22 HUM. RTS. L. REV. 1, 9 (2022).

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.* at 10. For an example of the EU’s attempt to measure the success of their judicial digitization efforts, see 2022 EU Justice Scoreboard, EUROPEAN COMMISSION, 31-36, [https://ec.europa.eu/info/sites/default/files/eu\\_justice\\_scoreboard\\_2022.pdf](https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2022.pdf).

<sup>11</sup> Law N° 027/2019 of 19/09/2019 Relating to the Criminal Procedure (Rwanda).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

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which require anyone wishing to create audio or visual recordings of hearings to request permission in writing at least 48 hours in advance.<sup>16</sup> As the technology available to log into the hearings expands, the judiciary will need to think about how to prevent people from illegally recording hearings from the other end in order to comply with the Law on Criminal Procedure. Additionally, Article 176 nearly always requires an “in person” appearance in order to have the privilege of appeal in cases where the judgment at first instance was passed down in absentia.<sup>17</sup> It is unclear whether remote hearings would qualify as “in person” to satisfy this requirement, and furthermore, policies would need to be created to distinguish people truly in absentia from those having technology issues.

Overall, the use of remote hearings is in compliance with Rwandan Criminal Procedure, though the Code highlights areas over which procedure should be cautious to respect the rights of defendants.

## II. Choosing the Kind of Hearings to Hold Remotely

Rwanda should also consider what kind of hearings it makes sense to hold remotely. Rwandan practice already matches US practice in holding hearings with prisoners, including pre-trial detention hearings, remotely. There might be other contexts in which the urgency of the facts makes remote hearings a good choice, such as in domestic violence and child protection cases.<sup>18</sup> The UN recommends the use of remote hearings in transnational criminal contexts, because of the logistical and jurisdictional difficulty of these cases, and has published a long handbook about how best to conduct these hearings that might be of interest.<sup>19</sup> Rwanda used some similar remote procedures in the International Criminal Tribunal for Rwanda (ICTR), mostly to allow witnesses who could not or did not want to appear in person to testify, as well as for witness protection and to avoid logistical problems associated with transporting certain detainees.<sup>20</sup> Additionally, there are contexts where remote hearings do not make sense, including those where a relevant party has a disability, is illiterate, or is otherwise prohibited from making full use of the technology. Rwanda should also make practical decisions about when to do remote hearings based on which levels of courts have the technology infrastructure to conduct remote hearings. In issuing guidance about which hearings should be held remotely, Rwanda should balance which proceedings will be easiest to run remotely, versus which kinds of proceedings will be best done in the interest of justice remotely.

The European Court of Human Rights has instituted a “counterbalancing factors” analysis in the EU, which weighs the increased difficulty for the defendant of making their case and exercising their rights in the virtual environment against the scale of protections for defendants enacted in that environment to determine what kinds of proceedings can be done remotely without violating the due process rights of criminal defendants.<sup>21</sup> Because of the importance of the criminal defendant himself making his case at trial, the suggestion behind this test is that the

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *What Do We Know About Virtual Court Hearings?*, CASEY FAMILY LAW (July 14, 2020), <https://www.casey.org/virtual-permanency-courts/>.

<sup>19</sup> Manual on Videoconferencing: Legal and Practical Use in Criminal Cases, UNITED NATIONS OFFICE ON DRUGS AND CRIME (2017), [https://www.unodc.org/documents/organized-crime/GPTOC/GPTOC2/MANUAL\\_VIDEOCONFERENCING.pdf](https://www.unodc.org/documents/organized-crime/GPTOC/GPTOC2/MANUAL_VIDEOCONFERENCING.pdf).

<sup>20</sup> *Id.* at 131.

<sup>21</sup> Kamber, *supra* note 8, at 12.

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physical presence of accused is far more important at trial level than appellate level, thus making appellate remote hearings more just under the scheme of rights in the European Union.<sup>22</sup> For example, in *Marcello Viola v. Italy*, the European Court of Human Rights ruled that the defendant's rights were adequately protected when he appeared at his appeal via video link from prison.<sup>23</sup> The defendant was connected to the mafia, and there were legitimate safety concerns that caused the Italian authorities to set up his appeal in this way, as well as sufficient protections for his rights built into the process.<sup>24</sup> When the ECHR has ruled that video hearings violate a defendant's due process rights, the cases have largely been against the Russian government, and turned on the defendant's complete lack of access to an attorney.<sup>25</sup>

The judiciary should also consider whether it makes sense to require the accused's consent to host certain hearings remotely, or whether remote hearings can be mandated. International practice on this is hugely mixed, and Rwanda would not have to answer one way or another. In South Africa, for example, online hearings require the accused's consent and the trial court's order, but witnesses can petition for it based on their safety concerns.<sup>26</sup> Rwanda could adopt a similar strategy, but also follow *Marcello Viola* and make remote hearings mandatory for prisoners at a certain security status.

**III. Optimizing Rwanda's Current Procedures****Rwanda's Current and Future Technology**

Rwanda has a significant amount of the technology infrastructure necessary for remote hearings already in place and has since well before the pandemic, in contrast with most of the world's jurisdictions. This infrastructure includes the IECMS system<sup>27</sup> to manage cases throughout different parts of the justice sector, as well as the various hardware VCF systems for videoconferencing that have been in use in certain designated courts and prisons for years. It also includes the ongoing efforts to expand broadband and device access throughout the country. Rwanda further relied on Skype during the pandemic to increase its digital capacity in an emergent capacity.

Mr. Gashemeza indicated to me that expanding the availability to VCF through a mobile app connected to the IECMS is a high priority, with a goal to make such access available to everyone who is connected to that platform—parties, advocates, all judges nationwide, investigative bodies, and all other concerned parties. This solution would be more resource-efficient than

<sup>22</sup> *Id.* at 16. The rights of the accused in the EU are protected by Article 6 of the European Convention on Human Rights and are extensive.

<sup>23</sup> *Id.* at 17-18 (citing *Marcello Viola v. Italy*, App. No. 77633/16 (June 13, 2019), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-194036%22%5D%7D>). Note that the full decision is only available in French.).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 19-20.

<sup>26</sup> Fawzia Cassim, *The Accused's Right to Present: A Key to Meaningful Participation in the Criminal Process*, 38 COMPAR. & INT'L L. J. S. AFR. 285, 288 (July 2005).

<sup>27</sup> The Integrated Electronic Case Management System (IECMS) is used by the Rwandan Judiciary to manage their caseload. It was specifically designed by the Judiciary for this purpose. All Rwandan cases are filed via this system, and all documents are submitted electronically. It has specific portals for judges, lawyers, and parties. To read more about IECMS, see *Rwanda's Justice Sector Integrated Electronic Case Management System (IECMS)*, SYNERGY, <https://www.synisys.com/featured-projects/rwandas-justice-sector-integrated-electronic-case-management-system-iecms/>. For a demonstration of how ICEMS works, see the Rwandan Judiciary's YouTube tutorial for its use at <https://www.youtube.com/watch?v=zmNTeAMyIOI>.



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attempting to install VCF technology in all 190+ courtrooms across the country and could also take advantage of larger government and civil society initiatives to increase broadband and technology access throughout the country.

**Use and Problems of Technology for Remote Hearings in Other Jurisdictions**

Rwanda's current technology infrastructure for remote hearings is fairly good by international standards, as many countries did not have any digital judicial mechanisms until the COVID-19 pandemic. For example, Bangladesh implemented a very basic electronic case filing system as part of their pandemic response, while Rwanda had implemented the IECMS (which won international design awards) before the pandemic.<sup>28</sup> The other end of the spectrum is China, which has hugely digitized its judiciary since 2017 by introducing 24/7 entirely virtual courts in several cities that use virtual judges to make rulings on certain kinds of cases dealing with internet rights.<sup>29</sup> While this effort has been praised for its increased transparency, it has also been criticized as part of its authoritarian control over its population.<sup>30</sup> Other jurisdictions that pivoted to remote hearings abruptly include Nigeria, the United Kingdom, Australia, the United Arab Emirates and South Africa.<sup>31</sup> One study focused on Australia indicated that the primary evolution during the pandemic has been from AVL hearings (where one participant, generally a vulnerable witness or a prisoner, calls into a larger in-person hearing via an audio-visual link (AVL)) to fully remote hearings, where everyone is calling in.<sup>32</sup> Australia even engaged in complex litigation via fully remote hearings, whereas jurisdictions like South Africa, despite its judicial orders to pivot to remote hearings, struggled to implement them in practice.<sup>33</sup> Australia used nearly every known commercial videoconferencing platform, while other countries could not implement any. Some jurisdictions were also criticized for the scope of the decisions taken online, as Nigeria was when a court sentenced someone to death via a Zoom proceeding.<sup>34</sup> The United Arab Emirates is pivoting to run 80% of their litigation sessions remotely permanently after the pandemic,<sup>35</sup> and has used MeetMe and WebEx as its primary vehicles for remote hearings in both the criminal and civil contexts.<sup>36</sup>

While the resources available to nations matters in their ability to digitalize at their preferred speed, as one report about the digitalization of the judiciaries, primarily the e-case management

<sup>28</sup> Aiman R. Khan, *The Law on E-judiciary Might Change Bangladesh Courts Forever*, BUS. STANDARD (May 21, 2020, 6:22 PM), <https://www.tbsnews.net/thoughts/law-e-judiciary-might-change-bangladesh-courts-forever-84148>.

<sup>29</sup> Bryan Lynn, *Robot Justice: The Rise of China's 'Internet Courts'*, VOA: LEARNING ENGLISH (Dec. 11, 2019), <https://learningenglish.voanews.com/a/robot-justice-the-rise-of-china-s-internet-courts-5201677.html>.

<sup>30</sup> Jason Tashea, *How the U.S. Can Compete with China on Digital Justice Technology*, BROOKINGS: TECH STREAM (Oct. 25, 2021), <https://www.brookings.edu/techstream/how-the-u-s-can-compete-with-china-on-digital-justice-technology/>.

<sup>31</sup> M.M. Maya, President of the Supreme Court of Appeal, *Practice Direction: Supreme Court of Appeal Video or Audio Hearings During Covid-19 Pandemic*, SUPREME COURT OF APPEAL, SOUTH AFRICA (Apr. 29, 2020), <https://www.supremecourtsofappeal.org.za/index.php/2-uncategorised/46-practice-directions>.

<sup>32</sup> Michael Legg & Anthony Song, *The Courts, the Remote Hearing, and the Pandemic: From Action to Reflection*, 44 UNIV. NEW S. WALES L.J., 126, 130-35 (2021).

<sup>33</sup> *Id.* at 144.

<sup>34</sup> *Coronavirus: Nigeria's Death Penalty by Zoom 'Inhumane'*, BBC (May 6, 2020), <https://www.bbc.com/news/world-africa-52560918>.

<sup>35</sup> Virtual Litigation, UNITED ARAB EMIRATES (July 7, 2021), <https://u.ae/en/information-and-services/justice-safety-and-the-law/litigation-procedures/virtual-litigation>.

<sup>36</sup> Remote Hearings, ABU DHABI JUDICIAL DEPARTMENT, <https://www.adjd.gov.ae/en/Pages/RemoteCourtHearings.aspx>.



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systems of the Baltic and Nordic states discusses, it is not the sole contributing factor.<sup>37</sup> For example, U.S. jurisdictions, despite the resources available in the US, have digitized case management systems at hugely varying levels, including 26 jurisdictions that as of 2015 could not identify how many cases had been filed and disposed of in a year in their jurisdictions.<sup>38</sup> The US did hold certain kinds of hearings remotely before the pandemic, mostly pretrial detention and immigration hearings.<sup>39</sup> Nevertheless, many organizations and jurisdictions issued emergency guidance about how to pivot courts to providing some services virtually, including the Joint Technology Committee of the Conference of State Court Administrators, the National Association for Court Management, and the National Center for State Courts;<sup>40</sup> the state of California;<sup>41</sup> and the state of Michigan.<sup>42</sup> US jurisdictions have overwhelmingly relied on the videoconferencing technology Zoom and have had issues regarding litigants' technology access that has resulted in several proceedings having to be re-tried.<sup>43</sup> The US faces significant technology access issues as well, particularly among low-income residents, who often lack broadband access and/or access to a device that allows them the full ability to participate in the hearing (i.e., they have no video, they are unable to share their screens or otherwise upload and show documentary evidence).<sup>44</sup> Similarly, attorneys in the US struggle to communicate with their clients when hearings are fully remote, and judges and juries struggle to assess the credibility of witnesses, as well as any relevant cognitive disabilities.<sup>45</sup>

Given these comparisons, Rwanda is not particularly far behind in terms of resources for remote hearings. Rwanda's legal infrastructure likely allows remote hearings to be conducted at a large scale with the proper procedures in place. In the next section, I make recommendations for how to implement those procedures.

## **Recommendations for Non-Hardware Changes Rwanda Can Make to Uphold Due Process Through the Technology Used and Judges' Operation of It**

### **1. Software Changes**

This survey of international procedures and difficulties in remote hearings indicates the kinds of problems Rwanda should address when considering the technology it uses to conduct remote hearings. In order to optimize its use of technology to make remote hearings as secure and effective as possible, Rwanda should ensure that between VCF, the IECMS, and any other

<sup>37</sup> Frederik Waage & Hanne Marie Motzfeldt, *Digitalization at the Courts*, NORDIC CO-OPERATION (May 5, 2022), <https://www.norden.org/en/publication/digitalization-courts>.

<sup>38</sup> Tashea, *supra* note 30.

<sup>39</sup> Alicia L. Bannon & Douglas Keith, *Remote Court: Principles for Virtual Proceedings During the Covid-19 Pandemic and Beyond*, 115 NW. L. REV. 1875, 1882 (2021).

<sup>40</sup> JTC Quick Response Bulletin: Strategic Issues to Consider When Starting Virtual Hearings (Apr. 7, 2020), <https://www.ncjfcj.org/wp-content/uploads/2020/04/COSA-NSCSC-and-NACM-JTC-Response-Bulletin-Strategic-Issues-to-Consider-When-Starting-Virtual-Hearings-.pdf>.

<sup>41</sup> California Commission on Access to Justice, *Remote Hearings and Access to Justice: During Covid-19 and Beyond*, [https://www.ncsc.org/\\_data/assets/pdf\\_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf](https://www.ncsc.org/_data/assets/pdf_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf).

<sup>42</sup> State Court Administrative Office, *Remote Court Participation Chart*, MICHIGAN COURTS (May 11, 2020), [https://drive.google.com/file/d/1q5oP82\\_vQOAznuBgFiV-h9Jj5lUtCDlj/view](https://drive.google.com/file/d/1q5oP82_vQOAznuBgFiV-h9Jj5lUtCDlj/view).

<sup>43</sup> Avalon Zoppo, *Court Orders Do-Over After Tech Troubles Plague Zoom Trial*, LAW (May 9, 2022, 5:40 PM), <https://www.law.com/nationallawjournal/2022/05/09/court-orders-do-over-after-tech-troubles-plague-zoom-trial/>.

<sup>44</sup> Bannon & Keith, *supra* note 39 at 1889, 1891.

<sup>45</sup> *Id.* at 1883, 1885.

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technology in play, all parties involved have access to the ability to share and view documentary evidence and adequate assurance that proceedings are secure (such that no one can enter or record proceedings who is not authorized to do so). Additionally, judges should have power to control the proceedings. Necessary mechanisms include but are not limited to controls over the ability to record proceedings, the ability to control the entry and exit of participants from the meeting, and the ability to mute parties not meant to be speaking so as to maintain order within the proceeding.

**2. Protection of Attorney-Client Privilege and Communication Privacy Generally**

Additionally, there should be some procedure set up to allow parties who are meant to be able to communicate privately during the procedure to be able to do so. This aspect of remote hearings is critical to get right in criminal cases, because it maintains attorney-client privilege and upholds a defendant's due process right to counsel. The US has relied on text messaging between the attorney and the client or private Zoom breakout rooms for them, but the success of these procedures has been incomplete.<sup>46</sup> Most of the solutions for this problem so far, even those provided by the judiciary formally,<sup>47</sup> seem to be focused on how advocates prepare to go to trial virtually, rather than on systemic solutions to the problem of access to counsel.<sup>48</sup> The Rwandan Judiciary could build a procedure into its protocols for remote hearings to dictate what kind of technology should be used to facilitate this communication (for example, providing a phone to inmates where they can call their advocates while appearing remotely), or by scheduling breaks into the proceedings where advocates and clients can confer in private. This area is an example where technology might actually increase due process protections for criminal defendants, if it can be reliably used to increase their access to counsel beyond what it might have been in person. Conversely, it is also important to ensure that parties who are not supposed to communicate do not have access to each other during the hearing. For example, witnesses in domestic violence cases should be shielded from contact by their abuser, and the defendant-abuser should be prevented from using the technology to find out anything about them (such as their phone number, which was an issue in New York State family court in the United States).<sup>49</sup>

**3. Creating Protocols to Train Judges and Prison Officials in Advance of Hearings**

In addition to examining Rwandan technology to ensure it fulfills these criteria, the Judiciary should also create a protocol by which judges can be trained to use the technology, as well as be trained to check for and troubleshoot issues with other parties' use of the technology. While IT staff would be helpful, it would likely be more cost-effective to ensure all judges can do most of the IT troubleshooting necessary and reserve that expensive resource for the worst problems that

<sup>46</sup> *Id.* at 1883.

<sup>47</sup> Sabrina Ayers Fisher, *Remote Hearing Etiquette Guide for Counsel and Clients*, OFFICE OF THE PUBLIC ADVOCATE, MARICOPA COUNTY (Arizona) (Apr. 30, 2020), <https://superiorcourt.maricopa.gov/media/6787/remote-hearing-etiquette-guide-for-counsel-and-clients.pdf>.

<sup>48</sup> See e.g., *Virtual Court Hearings: Practical Tips, Tricks, and Takeaways for Lawyers Everywhere*, HOWARD KENNEDY (U.K. law firm), [https://afaa.ngo/resources/News/Virtual%20Court%20Hearings\\_%20Practical%20tips,%20tricks%20and%20takeaways%20for%20lawyers%20everywhere.pdf](https://afaa.ngo/resources/News/Virtual%20Court%20Hearings_%20Practical%20tips,%20tricks%20and%20takeaways%20for%20lawyers%20everywhere.pdf);

<sup>49</sup> *Recommendations for New York City Virtual Family Court Proceedings, With Particular Focus on Matters Involving Litigants Who Are Survivors of Abuse*, NEW YORK CITY BAR (Apr. 9, 2021), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/comments-on-virtual-trial-rules-domestic-violence-cases>.

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arise. The protocol should direct judges to ensure before a hearing that all parties have reliable internet access and access to devices with the necessary capability to participate in the hearing. Additionally, judges should make sure that all parties have the services they need to fully participate, including language interpreters and adequate support for victims (particularly children and victims of domestic violence).

Judges should also ensure, to the best of their ability, that testifying individuals are in safe locations where they will not be coerced and will be able to speak freely. The courtroom provides this security by the presence of armed guards in a way that is more difficult to re-create online, where the nearby presence of friends, family members, prison guards, or the general public might make it harder for people to testify honestly and completely. This concern about family coercion is particularly acute when witnesses are minor children who might be testifying against family members. The Judiciary should decide what resources it wants or needs to devote to ensure that people have safe places to testify where they will not be coerced.

Particularly relevant here is the inherently coercive nature of testifying from a prison, the psychologically deleterious effects of which are well-documented. Separate guidelines should be issued for prisons, strictly laying out prisoners' need for as much privacy as prison security allow for during their hearings, as well as access to their attorney. Judges should ask parties about all of these factors in advance and ensure that the technology will connect before the hearing, so IT support can be brought in if necessary. In some cases, the likely coercive effects of the environment for a witness or defendant might be so much that the judge should opt to hold the hearing in person. The guidelines the judiciary creates to determine which hearings should be held remotely should address these concerns.

**4. Creating Protocols for Judges' Use During Hearings**

Judges should similarly have a protocol directing them on how to use the technology during the trial. This protocol should include directions about how to maintain order, show documentary evidence (if necessary), and how to ensure attorney-client privilege is guaranteed. It also should include any Rwandan law requirements about when an accused is required to be allowed to be face-to-face with the evidence against them (this is called the right of confrontation in the US and Europe). This protocol should also provide directions to judges on what to do if a participant gets disconnected from the hearing, and what to do if the problem recurs. How long of a break should the proceeding take to allow for reconnection? At what level of technological difficulty should the hearing move to audio-only? When should it simply be rescheduled? The judiciary can impose uniform guidance and pass it along to judges to enact in their virtual courtrooms to ensure a fair approach throughout courtrooms nationwide and a serious attitude throughout proceedings.

**5. Creating Protocols for the Public**

In addition to pre-trial guidance provided to judges, the judiciary should create pre-trial guidance for witnesses and victims, explaining how to use the technology and any secure testimony space, as well as providing them with resources for further support. In Abu Dhabi, the judicial department's website includes hearing instructions, FAQs, and a page guiding the ethics and behaviors of participants in remote hearings that Rwanda could imitate in its public

**KATHERINE VITI**(540) 931-3946 | 895 Campus Drive #333D, Stanford, CA 94305 | [katherineviti@stanford.edu](mailto:katherineviti@stanford.edu)

guidance.<sup>50</sup> This guidance also includes quick access to IT support through Whatsapp and phone. This protocol should include information about witness protection, which is well-established in Rwanda and includes both digital and physical tools for witnesses who are testifying remotely because they fear for their safety.<sup>51</sup>

Optimizing technology can also go beyond protecting the rights and benefits of in person proceedings. An opportunity to increase justice via technology is the ability to publicize hearings. If a hearing will be publicly viewable, either livestreamed or as a recording afterwards, this should be advertised, in conjunction with Rwandan constitutional guarantees of judicial transparency. Access to justice is increased by online hearings because more of the public can see and understand what is going on.

**IV. Conclusion**

As Rwanda moves to further implement remote hearings in the criminal context, the Judiciary can set guidelines for judges, prison officials, attorneys, and parties to ensure that due process rights of criminal defendants are respected within the proceedings. Additionally, Rwanda has the potential to expand the technology so as to further the scope at which remote hearings can be conducted. Still, the judiciary should think carefully about in which contexts remote hearings serve the goals of fact-finding and justice, and in what contexts remote hearings make less sense. My comparative review of remote hearing practices in jurisdictions across the world has revealed that most judiciaries are struggling with the same problems in implementation, and that no system has figured out how to best solve many of these problems.

<sup>50</sup> See Remote Court Hearings, *supra* note 36. Click on the tabs labelled “Instructions for Attending Hearings”, “Ethics of Remote Hearings, and “FAQs”, at <https://www.adjd.gov.rw/en/Pages/RemoteCourtHearings.aspx>. There are also user guides for the two meeting platforms used available at this link.

<sup>51</sup> For information regarding the successes and failures of Rwandan witness protection, particularly in conjunction with cases surrounding the genocide, see Donatien Nikuze, *Witness Protection in Rwandan Judicial System*, 22 INT’L J. ENG’G RSCH AND TECH. 2738 (2013).

## Applicant Details

First Name	Madeleine
Last Name	Voigt
Citizenship Status	U. S. Citizen
Email Address	<a href="mailto:voigtmaddie@gmail.com">voigtmaddie@gmail.com</a>
Address	<div> <div>Address</div> <div> <div>Street</div> <div>509 N Fremont Ave., Unit 113</div> <div>City</div> <div>Tampa</div> <div>State/Territory</div> <div>Florida</div> <div>Zip</div> <div>33606</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	3524671366

## Applicant Education

BA/BS From	University of South Florida
Date of BA/BS	December 2017
JD/LLB From	Stetson University College of Law
	<a href="http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp">http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp</a>
Date of JD/LLB	May 13, 2023
Class Rank	33%
Law Review/Journal	Yes
Journal(s)	Stetson Business Law Review
Moot Court Experience	No

## Bar Admission

## Prior Judicial Experience

Judicial Internships/  
Externships      **No**  
Post-graduate Judicial  
Law Clerk      **No**

### **Specialized Work Experience**

### **Recommenders**

Hopper, Ryan  
hopperr@gtlaw.com  
8133185707  
Weinstein, David  
weinsteind@gtlaw.com  
813.318.5701  
Weiner, Erica  
es0725@gmail.com  
917-601-9949

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Madeleine Voigt  
509 N. Fremont Ave.  
Unit 113  
Tampa, FL 33606

March 25, 2023

The Honorable Jamar K. Walker  
United States District Court for the Eastern District of Virginia  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510

Dear Judge Walker:

I am third-year student at Stetson University College of Law and Litigation Paralegal at Greenberg Traurig writing to apply to a clerkship in your chambers for the 2024-25 term.

My resume, writing sample, and law school transcript are enclosed. Letters of recommendation from Erica J. Weiner, Esq. (917.601.9949), Ryan T. Hopper, Esq. (813.318.5707), and David B. Weinstein, Esq. (813.318.5701) will follow. Please let me know if you require additional information. Thank you for your consideration.

Respectfully,

  
Madeleine J. Voigt

**MADELEINE J. VOIGT**  
(352) 467-1366 – mvoigt@law.stetson.edu  
Tampa, Florida 33606

## EDUCATION

---

### STETSON UNIVERSITY COLLEGE OF LAW, Gulfport, FL

J.D. Candidate, May 2023

Honors: *Stetson Business Law Review*, Notes & Comments Editor  
Dean's List, Spring 2021; Honor Roll, Fall 2020  
Highest Grade Designation: Ethics & The Practice of Criminal Law  
GPA: 3.278  
Rank: 85/263 (Top 33%)

### UNIVERSITY OF SOUTH FLORIDA, Tampa, FL

B.S., Finance, December 2017

GPA: 3.48  
Honors: Florida Academic Scholarship Recipient; USF Director's Scholarship Recipient

## EXPERIENCE

---

**GREENBERG TRAURIG**, Tampa, FL November 2020 – May 2021, April 2022 – Present  
*Litigation Paralegal/Law Clerk*

Research and draft memoranda in support of motions regarding substantive and procedural issues, including complex discovery issues. Research expert witness testimony and *Daubert* challenges. Proofread court filings and ensure citations follow *The Bluebook*. Attend strategy calls with expert witnesses.

**ASHLEY FURNITURE INDUSTRIES**, Tampa, FL May 2021 – April 2022  
*Trademark & Licensing Paralegal*

Conducted clearance searches in USPTO database (TESS) and common law searches for proposed trademarks. Prepared and filed Trademark applications with the USPTO.

**ALLSTATE**, Tampa, FL September 2018 – November 2020  
*Litigation Paralegal*

Prepared responses to requests for production and interviewed clients for interrogatory answers. Requested medical records via subpoena. Scheduled independent medical examinations (IMEs).

**DPW LEGAL**, Wesley Chapel, FL March 2016 – November 2017  
*Paralegal/Legal Assistant*

Scheduled hearings, depositions, and mediations. Reviewed citations to record on appeal in draft briefs for accuracy. Prepared Copyright and Trademark applications.

## INTERESTS

---

Pickleball, investigative journalism, tropical houseplants



(/StudentSelfService/)

Madeleine J Voigt

Student Academic Transcript

## Academic Transcript

## Transcript Level

Law

## Transcript Type

Law Sch Transcript w/Rank

Student  
InformationDegrees  
AwardedInstitution  
CreditTranscript  
TotalsCourse(s) in  
Progress

This is not an official transcript. Courses which are in progress may also be included on this transcript.

## Student Information

## Name

Madeleine J Voigt

## Curriculum Information

## Current Program :

## Program

Juris Doctor

## College

Law School

Major and  
DepartmentLaw, Department  
not Declared

## Degrees Awarded

**Sought**

Juris Doctor

**Major**

Law

## Institution Credit

Term : Fall 2019-Law

**Academic  
Standing**

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1181	Law School-GULFPORT	LW	CONTRACTS	275	4.000	11.00	
LAW	1290	Law School-GULFPORT/TAMPA	LW	TORTS	275	4.000	11.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term</b>	8.000	8.000	8.000	8.000	22.00	2.750
<b>Cumulative</b>	8.000	8.000	8.000	8.000	22.00	2.750

Term : Spring 2020-Law

**Term Comments**

A global health emergency during this term

required significant changes in course delivery

for most courses. All courses impacted by the

change in delivery were graded on a pass/fail

system.

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1150	Law School-GULFPORT/TAMPA	LW	CIVIL PROCEDURE	P	4.000	0.00	
LAW	1270	Law School-GULFPORT/TAMPA	LW	RESEARCH AND WRITING I	P	4.000	0.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term</b>	8.000	8.000	8.000	0.000	0.00	
<b>Cumulative</b>	16.000	16.000	16.000	8.000	22.00	2.750

Term : Summer 2020-Law

**Academic Standing**

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1251	Law School-	LW	REAL	350	4.000	14.00	

GULFPORT/TAMPA

PROPERTY

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term</b>	4.000	4.000	4.000	4.000	14.00	3.500
<b>Cumulative</b>	20.000	20.000	20.000	12.000	36.00	3.000

Term : Fall 2020-Law

**Academic  
Standing**

Good Standing

**Additional  
Standing**

Honor Roll

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1200	Law School-GULFPORT	LW	CRIMINAL LAW	375	4.000	15.00	
LAW	1275	Law School-GULFPORT/TAMPA	LW	RESEARCH AND WRITING II	275	3.000	8.25	
LAW	2350	Law School-DISTANCE LEARNING	LW	PROFESSIONAL RESPONSIBILITY	350	3.000	10.50	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term</b>	10.000	10.000	10.000	10.000	33.75	3.375
<b>Cumulative</b>	30.000	30.000	30.000	22.000	69.75	3.170

Term : Spring 2021-Law

**Academic  
Standing**

Good Standing

**Additional  
Standing**

Dean's List

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1195	Law School-GULFPORT/TAMPA	LW	CONSTITUTIONAL LAW I	350	4.000	14.00	
LAW	2190	Law School-GULFPORT	LW	EVIDENCE	400	4.000	16.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	8.000	8.000	8.000	8.000	30.00	3.750
Cumulative	38.000	38.000	38.000	30.000	99.75	3.325

Term : Summer 2021-Law

## Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	3502	Law School-DISTANCE LEARNING	LW	FLORIDA CRIMINAL PROCEDURE	325	3.000	9.75	
LAW	3592	Law School-DISTANCE LEARNING	LW	INTERVIEWING AND COUNSELING	350	2.000	7.00	
LAW	3761	Law School-DISTANCE LEARNING	LW	NEGOTIATION AND MEDIATION	300	2.000	6.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	7.000	7.000	7.000	7.000	22.75	3.250
Cumulative	45.000	45.000	45.000	37.000	122.50	3.310

Term : Fall 2021-Law

## Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	3040	Law School-GULFPORT	LW	ADMINISTRATIVE LAW	275	3.000	8.25	
LAW	3154	Law School-GULFPORT	LW	BUSINESS ENTITIES	350	4.000	14.00	

LAW	3174	Law School-GULFPORT	LW	BUSINESS LAW REVIEW EDITOR	S+	2.000	0.00
LAW	3487	Law School-DISTANCE LEARNING	LW	FINANCIAL ADVOCACY	S	1.000	0.00

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	10.000	10.000	10.000	7.000	22.25	3.178
Cumulative	55.000	55.000	55.000	44.000	144.75	3.289

Term : Spring 2022-Law

## Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	3090	Law School-DISTANCE LEARNING	LW	ADVANCED LEGAL RESEARCH	325	2.000	6.50	
LAW	3174	Law School-GULFPORT	LW	BUSINESS LAW REVIEW EDITOR	S+	2.000	0.00	
LAW	3190	Law School-DISTANCE LEARNING	LW	COMMERCIAL TRANSACTIONS	325	4.000	13.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	8.000	8.000	8.000	6.000	19.50	3.250
Cumulative	63.000	63.000	63.000	50.000	164.25	3.285

Term : Summer 2022-Law

## Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
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LAW	3393	Law School-DISTANCE LEARNING	LW	ETHICS & THE PRACTICE OF CRIMINAL LAW	400	3.000	12.00
LAW	3541	Law School-GULFPORT	LW	INDIVIDUAL RESEARCH PROJECT	I	1.000	0.00
LAW	3607	Law School-DISTANCE LEARNING	LW	JUDICIAL PRACTICE	S+	2.000	0.00
LAW	3894	Law School-DISTANCE LEARNING	LW	SURVEY OF FLORIDA LAW	S	2.000	0.00

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term</b>	8.000	7.000	7.000	3.000	12.00	4.000
<b>Cumulative</b>	71.000	70.000	70.000	53.000	176.25	3.325

Term : Fall 2022-Law

## Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	3140C	Law School-DISTANCE LEARNING	LW	APPELLATE PRACTICE & ADVANCED CRIMINAL	325	3.000	9.75	
LAW	3152	Law School-DISTANCE LEARNING	LW	BANKRUPTCY	300	3.000	9.00	
LAW	3764	Law School-DISTANCE LEARNING	LW	OVERVIEW OF FLORIDA LAW	275	3.000	8.25	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term</b>	9.000	9.000	9.000	9.000	27.00	3.000
<b>Cumulative</b>	80.000	79.000	79.000	62.000	203.25	3.278

## Transcript Totals

**Level Comments**

CLASS RANK FOR

Fall 2022-Law:

85/263

Transcript Totals - (Law)	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution	80.000	79.000	79.000	62.000	203.25	3.278
Total Transfer	0.000	0.000	0.000	0.000	0.00	0.000
Overall	80.000	79.000	79.000	62.00	203.25	3.278

**Course(s) in Progress**

Term : Spring 2023-Law

Subject	Course	Campus	Level	Title	Credit Hours
LAW	3685	Law School-DISTANCE LEARNING	LW	LAW PRACTICE MANAGEMENT	2.000
LAW	3696C	Law School-DISTANCE LEARNING	LW	ADV LGL WRT: CONTRACT DRAFTING	2.000
LAW	3751	Law School-DISTANCE LEARNING	LW	MULTISTATE STRATEGIES	4.000



April 05, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in support of Madeleine "Maddie" Voigt's application to serve as a law clerk to Your Honor. My name is Ryan Hopper. I am a litigation shareholder at Greenberg Traurig, P.A., and a former law clerk to a U.S. district judge.

Over the past few years and while also attending law school, Maddie has worked as a paralegal in our complex-litigation practice. We predominantly defend sophisticated clients in mass-tort and class actions, and we staff cases leanly to concentrate knowledge and remain nimble. The work is rewarding but demanding.

Maddie has become a core team member and has consistently "punched above her weight" for her age and experience. She routinely helps multiple national-caliber expert witnesses develop opinions on diverse scientific topics—compiling studies and other materials for consideration, participating in working meetings with experts, and serving as a sounding board for anticipated testimony. She contributes to potentially dispositive legal analyses and has helped prepare dozens of Daubert and summary-judgment motions. She supports technical depositions, manages electronic discovery, and otherwise seems to take any laboring oar she can to help represent our clients efficiently and effectively.

I have no doubt that Maddie would prove to be an excellent clerk. Aside from the wealth of practical experience she would bring to the role, Maddie is intellectually curious, hard-working, practical, and self-motivated. And sometimes just as important in close-knit working environments, Maddie has a fantastic attitude. I am confident our colleagues would all agree that Maddie keeps our spirits up when the stakes are high and the nights are long.

Our practice group views clerkships as so valuable that we very rarely hire lawyers directly out of law school. We have not done so in years, much preferring instead to seek young lawyers coming out of federal clerkships. Maddie is an exception, and we are extending her an offer to join us as a lawyer when she graduates and passes the Bar. Even still, we fully support her interest in pursuing a clerkship. My own remains one of the most meaningful periods of my life and career. I hope Maddie can have a similar experience, and I know she would well serve her court and country.

If Your Honor has any questions about Maddie, it would be my pleasure to answer them.

Respectfully,

Ryan Hopper

Shareholder

Greenberg Traurig, P.A.

Tampa, FL 33602

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Ryan Hopper - hopperr@gtlaw.com - 8133185707

**Erica J. Weiner**

Telephone: (917)601-9949

Email: EricaJayneWeiner@gmail.com

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March 19, 2023

Dear Judge:

I am writing this letter of recommendation in support of Madeleine Voigt for a judicial clerkship with Your Honor upon her upcoming graduation from law school in May 2023.

I first met Madeleine several years ago when she interviewed with me to be a Trademark & Licensing Paralegal on my Intellectual Property and Retail team at Ashley Furniture Industries. At the time, my position was Assistant General Counsel, Global IP & Retail at Ashley Furniture Industries, and I was looking for a candidate who had some fundamental skills, but had a yearning to learn more and really develop in the paralegal role. Madeleine impressed me from the moment we met - she was bright, motivated and was passionate about learning. She did not appear to be the type of candidate who was just saying these things to get the job, but actually meant them. Happily, this proved to be true, and while working together at Ashley Furniture Industries, Madeleine used her prior knowledge as the building blocks, and continued to learn different areas of the law, from global trademark prosecution, to intellectual property enforcement management and drafting retail store licenses and amendments. She continued to impress me, and even more so as she was a full time law student while working on my team, and handled the balancing of her obligations incredibly well. What impressed me even more was her ability to learn, accept feedback, and incorporate it in her work going forward. She was a great listener and was always trying to think of ways to help.

Based upon my experience with Madeleine, I believe she certainly has the requisite skills to excel in a clerkship, and believe her enthusiasm would only help guarantee success in this role. I hope you will consider her for a clerkship position, and thank you for your consideration.

Best regards,



Erica J. Weiner

IN THE SECOND DISTRICT COURT OF APPEAL OF FLORIDA

SALVADOR CARBAJAL	)	
GARCIA	)	
	)	DCA CASE NO. 2D22-1409
Appellant.	)	L.T. CASE NO. 19-CF-015144
v.	)	
	)	
STATE OF FLORIDA	)	
	)	
Appellee.	)	
_____	)	

An Appeal from the Circuit Court of the Twentieth Judicial Circuit  
In and for Lee County

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**APPELLANT'S INITIAL BRIEF**

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Madeleine Voigt, Esq.  
Florida Bar No. 000000  
1 Main Street  
Tampa, FL 36000  
813-555-5555  
mvoigt@law.stetson.edu

Counsel for Appellant Carbajal

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## **PREFACE**

The parties are referred to herein as Mr. Carbajal and the State of Florida (the “State”). The Record on Appeal is cited as (R. *P*) and the trial transcript as (T. *P*) where “*P*” is the page.

## **STATEMENT OF THE CASE AND FACTS**

### **a. The pertinent facts of the alleged offense**

On March 4, 2019, Animal Control responded to a complaint about a dog tied to basketball post in a residential driveway. (T. 229, 245). The responding Animal Control officer noticed that the dog, named Walter, had blood on his chest and a rope tied around his neck that was embedded in his skin. (T. 249). Walter emitted a strong, foul odor. (T. 250-51, 284). No one was home while the officer was at the property. (T. 273). The officer removed Walter from the property and took him to Lee County Animal Services for medical treatment. (T. 260). The officer contacted Mr. Carbajal and they met at Lee County Animal Services (T. 263). Mr. Carbajal surrendered Walter. (T. 264-65). It is undisputed that Mr. Carbajal owned Walter. (T. 263-64, 448).

**b. The course of proceedings and the disposition of the matter below**

Salvador Carbajal was charged with one count of cruelty to animals in violation of Florida Statutes 828.12(2); 777.011. (R. 27).

Less than one month before trial, the State amended the information to charge Salvador Carbajal Garcia with one count of cruelty to animals in violation of Florida Statutes 828.12(2); 777.011. (R. 42).

Mr. Carbajal was tried by jury before the Honorable Bruce Kyle on February 4 and 5, 2020. (R. 47).

Through counsel, Mr. Carbajal filed a motion to suppress evidence obtained as a result of Animal Control and the Lee County Sheriff's Office's entry on his property, arguing that both agencies lacked the exigency required to enter his property without a warrant. (R. 50). The motion was heard before trial began and was denied. (T. 3, 67).

At trial, the State moved to limit proffered witness testimony from Mr. Carbajal's neighbors, Mr. and Ms. Gamble. (T. 459). The court granted this motion in part, excluding testimony about their interaction with law enforcement. (T. 474).

Counsel for Mr. Carbajal moved for judgment of acquittal after the State rested, arguing that the State charged a different individual, Salvador Garcia, pursuant to the amended information. (T. 444, 523). The motion was denied. (T. 449). Mr. Carbajal renewed his motion at the close of all evidence. The motion was again denied. (T. 523). After the defense rested, counsel for Mr. Carbajal requested an additional jury instruction of the standard cruelty to animals instruction. (T. 529). The request was denied. (T. 535).

The jury found Mr. Carbajal guilty as charged. (R. 74). Mr. Carbajal moved for a new trial, arguing that the trial court committed prejudicial error when it excluded Mr. and Ms. Gamble's testimony and denied Mr. Carbajal's motion to suppress and motion for judgment of acquittal. (R. 98). The court did not rule on the motion and Mr. Carbajal was sentenced to 364 days in jail as a condition to five years of probation. (R. 106, 113-14).

### **c. The pertinent facts of the trial**

Before opening arguments, the court heard Mr. Carbajal's motion to suppress. (T. 11-68). The state proffered testimony from Animal Control Officer Zemper Ortiz and Lee County Sheriff's deputy Joshua Roedding. (T. 12, 44). Mr. Carbajal argued that the proffered



testimony did not show the exigent circumstances required to enter his property without a warrant. The court denied the motion, finding that Officer Ortiz's observations warranted Walter's immediate removal. (T. 67-68).

Animal Control Officer Zemper Ortiz testified that she received the complaint about Walter on the morning of March 3, 2019 and arrived at Mr. Carbajal's home to investigate the complaint the next day. (T. 247). Officer Ortiz approached Walter and noticed the embedded rope and wound on Walter's neck. (T. 250). She testified that she was approximately two feet away from Walter when she noticed a rotting smell. (T. 250). Walter was friendly and wanted Officer Ortiz to pet him. (T. 37). Walter was not whimpering or barking. (T. 37). Officer Ortiz noticed a pink bucket near Walter that contained water. (T. 23-24). She testified that she knocked on the door of the house and realized no one was home. (T. 251). She then returned to Walter and called dispatch for Lee County Sheriff's Office to respond. (T. 251). While waiting for the deputy to arrive, Officer Ortiz did not try to remove the rope from Walter's neck. (T. 253). She testified that Walter was unable to take shelter underneath Mr. Carbajal's vehicle parked in the driveway. (T. 255-56).

Lee County Sheriff's Deputy Joseph Roedding responded to Officer Ortiz's call for assistance. (T. 283-84). Deputy Roedding testified that when he arrived on scene, Officer Ortiz requested he generate a case number so she could put a notification on Mr. Carbajal's door that Animal Control was at the property. (T. 284). Deputy Roedding testified this was the only reason he was called to the property. (T. 284). When he approached the driveway, he noticed Walter come out from under Mr. Carbajal's parked vehicle. (T. 290). He testified that he noticed an odor, possibly feces, when he approached Walter. (T. 285-86). He did not notice Walter's injury at first. (T. 289). Officer Ortiz asked Deputy Roedding to help cut the rope tying Walter to the basketball hoop. (T. 288). He cut the rope and then helped Officer Ortiz take Walter to her Animal Control bus. (T. 289). When Deputy Roedding asked Officer Ortiz why Walter was being removed from the property, Officer Ortiz lifted Walter's jaw, and Deputy Roedding noticed "swelling to the neck and a little red mark" where the rope was attached to Walter. (T. 289). This is the first time Deputy Roedding noticed that Walter was injured. (T. 289).

During proffered direct examination, Mr. Gamble testified that on the morning of Mr. Carbajal's arrest, five Lee County Sheriff's

officers came to his garage door. (T. 454). Mr. Gamble testified that the officers “kept trying to tell us that we needed to say something bad about Mr. Carbajal.” (T. 455). He further testified that the officers talked to him about the media. (T. 455). More specifically, he quoted the officer telling him that he needed to say something bad about Mr. Carbajal for the media. (T. 456).

Ms. Gamble testified during proffered direct examination that the officers wanted her to say there was a smell (coming from Walter) and informed her that the media will be at her door after Mr. Carbajal’s arrest. (T. 467).

The jury received the following standard instructions: Introduction to Final Instructions, Statement of the Charge, Count I Aggravated Animal Cruelty, Principals, Plea of Not Guilty, Reasonable Doubt and Burden of Proof, Defendant’s Statements, Rules for Deliberation, Cautionary Instruction, Verdict, and Submitting Case to the Jury. (R. 59-71). Counsel stipulated to the removal of numbers nine and ten from the standard instructions for Weighing the Evidence. (T. 526). Mr. Carbajal requested an instruction of the standard animal cruelty instruction based on F.S. 828.12(1). (T. 530). The request was denied. (T. 535).

The verdict form was general: “the defendant is guilty of Aggravated Animal Cruelty.” (R. 74).

### **SUMMARY OF THE ARGUMENT**

Mr. Carbajal’s motion to suppress evidence obtained from the warrantless search of his property was denied in error because the State failed to show exigent circumstances. *Brinkley v. County of Flagler*, 769 So. 2d 468 (Fla. 5th DCA 2000); *Davis v. State*, 834 So. 2d 322 (Fla. 5th DCA 2003). Walter was not subject to seizure under the plain view doctrine. *Pagan v. State*, 830 So. 2d 792, 808 (Fla. 2002). Thus, Mr. Carbajal’s judgment and sentence should be vacated.

The trial court erred when it denied Mr. Carbajal’s request for an additional jury instruction of the standard animal cruelty instructions, because the instruction given did not adequately cover his theory of defense. *See Parker v. State*, 641 So. 2d 369, 376 (Fla. 1994); *see also Stephens v State*, 787 So. 2d 747, 756 (Fla. 2001). Accordingly, at the least, Mr. Carbajal’s judgment and sentence should be reversed and remanded for new trial.

## ARGUMENT

### **I. MR. CARBAJAL’S MOTION TO SUPPRESS WAS DENIED IN ERROR BECAUSE THE STATE FAILED TO SHOW THE EXIGENT CIRCUMSTANCES REQUIRED FOR A WARRANTLESS SEARCH AND SEIZURE**

This Court reviews the denial of a motion to suppress using a mixed standard: the trial court’s application of the law is reviewed *de novo*, but this Court defers to the trial court’s factual findings if they are supported by competent, substantial evidence. *Duke v. State*, 82 So. 3d 1155, 1157-58 (Fla. 2d DCA 2012).

Law enforcement may enter private property without an arrest or search warrant to: preserve life or property, render first aid and assistance, or conduct a general inquiry into an unresolved crime. *Brinkley*, 769 So. 2d at 471.

However, they must not enter with an accompanying intent to arrest or search, and, importantly, they must have reasonable grounds to believe there is a substantial threat of imminent danger to life, health, or property. *See id.*

Moreover, under the plain view doctrine, law enforcement can only seize an object without a warrant if the object’s incriminating character is “immediately apparent” and the officers have a lawful

right of access to the object. *Jones v. State*, 648 So. 2d 669 (Fla. 1994) (citing *Minnesota v. Dickerson*, 508 U.S. 366, 113 S. Ct. 2130 (1993)).

Here, the court heard proffered testimony from Animal Control Officer Zemper Ortiz and Lee County Sheriff's deputy Joshua Roedding. (T. 12, 44). Mr. Carbajal argued that the proffered testimony did not show the exigent circumstances required to enter his property without a warrant. (T. 66-67). However, the court found that Officer Ortiz's observations warranted immediate action. (T. 66-67).

The record does not demonstrate that Animal Control and the Lee County Sheriff's Office's had the exigency required to search Mr. Carbajal's property without a warrant. The investigating Animal Control officer arrived at Mr. Carbajal's home to investigate the complaint, that Walter was tied to a basketball post in a driveway, a day after it was received. (T. 247). It wasn't until the officer approached Walter that she noticed blood on Walter's chest (T. 250). She noticed that Walter smelled once she was within two feet of him. (T. 250). Walter was friendly and not showing any obvious signs of distress, like whimpering or barking. (T. 37). Walter had water available to him. (T. 23-24). Notably, once the officer noticed the rope

embedded in Walter's neck, the officer never tried to remove it. (T. 253).

When the Lee County Sheriff's deputy arrived at Mr. Carbajal's property to complete paperwork, the deputy did not notice Walter's injury until he helped place Walter into the animal control officer's vehicle. (289). He did not notice Walter's injury while cutting the rope. (289). The deputy also noticed an odor, which he thought may have been feces. (T. 285-86). Once Walter was in the animal control officer's vehicle, the deputy noticed "swelling to the neck and a little red mark" after the animal control officer lifted Walter's chin to expose his neck (289). This was the first time the deputy noticed that Walter was injured. (289).

The facts in *Brinkley* are in stark contrast. In *Brinkley*, an animal control officer and sheriff's deputy responded to a complaint about many animals being kept in unhealthy conditions on a farm. *Brinkley*, 769 So. 2d at 469. Upon arriving at the gate of the property, both officers were "immediately struck by the undeniable reality of the horrid existence of inhumanity." *Id* at 471. Just by standing at the gate, both officers were overwhelmed by the nauseating smell of animal waste and could see piles upon piles of trash and feces on the

property. Dogs were running freely around the property and barking so loud that the officers had to shout to speak to one another. When approaching the farmhouse, the officers noticed a decaying dog carcass on top of a stack of small pet carriers on the porch. There was a living dog in one of the small carriers and fluid from the decaying carcass was dripping onto the living dog. The insides of the animal carriers were lined with approximately three inches of feces and there were many water bowls containing black, foul-smelling water or no water at all. Further inspection of the property revealed a second dead dog, partial dog remains, and a roach infestation so severe that roaches were eating a puppy's flesh.

Given the obvious distress of the animals and abhorrent conditions of the property, any reasonable person would have concluded that the immediate need for protective action was warranted. *Id* at 472. The animals on the property were seized. *Id*.

The facts in Mr. Carbajal's case simply do not demonstrate the exigency required for a warrantless search and seizure. Walter was in good spirits and not showing any obvious signs of distress. Walter's wound was not immediately apparent. The deputy did not even notice the wound until after he helped load Walter into the



animal control vehicle. At that point, the deputy asked why Walter was being removed and the animal control officer lifted Walter's chin to show the deputy the wound.

Moreover, besides the smell with a conflicting source, the record does not show Mr. Carbajal's property and Walter's area to be in a horrid, inhumane condition. Thus, any reasonable person who arrived at Mr. Carbajal's property the day it was investigated would not have concluded that an urgent and immediate need for protective action was warranted. Accordingly, Mr. Carbajal's motion to suppress was denied in error and his judgment and sentence should be vacated.

## **II. DENIAL OF MR. CARBAJAL'S REQUEST FOR THE STANDARD ANIMAL CRUELTY INSTRUCTION DEPRIVED MR. CARBAJAL OF AN ADEQUATE THEORY OF DEFENSE**

This Court reviews a trial court's decision on the giving or withholding of a proposed jury instruction is under the abuse of discretion standard, and a defendant is entitled to have the jury instructed on the rules of law applicable to his theory of defense if there is any evidence to support such instructions. *Aumuller v. State*, 944 So. 2d 1137, 1142 (Fla. 2d DCA 2006).

The trial court erred when it denied Mr. Carbajal's request for the misdemeanor animal cruelty instruction, because the felony instruction given did not adequately cover his theory of defense. *See Parker v. State*, 641 So. 2d 369, 376 (Fla. 1994); *see also Stephens v. State*, 787 So. 2d 747, 756 (Fla. 2001).

To receive an additional instruction, the requested instruction must be supported by the evidence, be a correct statement of the law that is not misleading or confusing, and ensure that the defendant's theory of defense is adequately covered. *See Stephens*, 787 So. 2d at 756. Whether the animal cruelty amounts to a misdemeanor under F.S. 828.12(1) or a felony under F.S. 828.12(2) is a question for the jury. *See State v. Morival*, 75 So. 3d 810 (Fla. 2d DCA 2011) (citing *Hynes v. State*, 1 So. 3d 328 (Fla. 5th DCA 2009)).

Here, it is undisputed that Mr. Carbajal's requested standard instruction is a correct statement of law that is not misleading or confusing. In addition, the requested instruction clearly encompasses Mr. Carbajal's alleged conduct of animal cruelty (T. 530-531). Lastly, the requested instruction was required to ensure that Mr. Carbajal's theory of defense was adequately covered pursuant to *Stephens* and *Morival*.

Mr. Carbajal requested jury instruction 29.13(a), which is the standard instruction for cruelty to animals under F.S. 828.12(1). (T. 530). The trial court denied Mr. Carbajal's request solely because cruelty to animals is not listed as a category two lesser included offense on the standard instructions for animal cruelty. (T. 535).

However, the crux of Mr. Carbajal's defense was that he did not intentionally harm Walter. (T. 235-36). Mr. Carbajal offered witness testimony from neighbors that interacted with and observed Walter on a regular basis (T. 481-83, 488-92). Mr. Carbajal testified that he did not notice anything wrong with Walter and Walter was not in distress (T. 503-505).

It was possible for the jury to find that Mr. Carbajal committed a misdemeanor under F.S. 828.12(1) because there is evidence to support that he did not intentionally harm Walter. Thus, the jury should have received the standard instruction for cruelty to animals under F.S. 828.12(1). Without it, Mr. Carbajal was deprived of his theory of defense that he did not intentionally harm Walter. Accordingly, judgment and sentence should be reversed and remanded for new trial.

**CONCLUSION**

For the reasons contained herein, this Court must vacate Mr. Carbajal's judgment and sentence, and remand for new trial.

Respectfully submitted,

Madeleine Voigt, Esq.  
Florida Bar No. 000000  
1 Main Street  
Tampa, FL 36000  
813-555-5555  
mvoigt@law.stetson.edu

Counsel for Appellant Carbajal

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email to Pamela Jo Bondi, Office of the Attorney General, CrimappTPA@myfloridalegal.com, Concourse Center #4, 3507 E. Frontage Rd. – Suite 200, Tampa, FL 33607, (813) 287-7900, on this 21<sup>st</sup> day of November, 2022.

S/ Madeleine Voigt  
Madeleine Voigt, Esq.  
Florida Bar No. 000000  
1 Main Street  
Tampa, FL 36000  
813-555-5555  
mvoigt@law.stetson.edu  
Counsel for Appellant Carbajal

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the font size used in this Brief is Bookman Old Style 14 point and Courier New 12 point in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

S/ Madeleine Voigt

**Applicant Details**

First Name **Samuel**  
Last Name **Waranch**  
Citizenship Status **U. S. Citizen**  
Email Address [swaranch@pennlaw.upenn.edu](mailto:swaranch@pennlaw.upenn.edu)  
Address

**Address**

**Street**  
**1904 Pine St. Apt. 1**  
**City**  
**Philadelphia**  
**State/Territory**  
**Pennsylvania**  
**Zip**  
**19103**  
**Country**  
**United States**

Contact Phone Number **9727429005**

**Applicant Education**

BA/BS From **Oberlin College**  
Date of BA/BS **May 2019**  
JD/LLB From **University of Pennsylvania Carey Law School**  
<https://www.law.upenn.edu/careers/>  
Date of JD/LLB **May 20, 2023**  
Class Rank **School does not rank**  
Law Review/Journal **Yes**  
Journal(s) **University of Pennsylvania Law Review**  
Moot Court Experience **No**

**Bar Admission****Prior Judicial Experience**

Judicial Internships/  
Externships **Yes**

Post-graduate Judicial Law Clerk      **No**

### **Specialized Work Experience**

### **Recommenders**

Heaton, Paul  
pheaton@law.upenn.edu  
Pritchett, Wendell  
pritchet@law.upenn.edu  
Austin, Regina  
raustin@law.upenn.edu  
215-898-5185

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**Samuel I. Waranch**

1904 Pine St. Apt. 1 Philadelphia, PA 19103 • (972) 742-9005 • swaranch@upenn.pennlaw.edu

March 23, 2023

The Honorable Jamar K. Walker  
United States District Court  
Eastern District of Virginia

Dear Judge Walker,

I hope you are well. I am writing to request your consideration of my application for a clerkship beginning in the fall of 2024 following a year of litigation experience at a Quinn Emanuel. Originally from Dallas, I am a third-year law student at the University of Pennsylvania Carey Law School.

Enclosed are my resume, transcript, and writing samples. Letters of recommendation from Professor Paul Heaton (pheaton@law.upenn.edu, 215-746-3353), Professor Regina Austin (raustin@law.upenn.edu, 215-898-5185), and Interim University President Wendell Pritchett (pritchet@law.upenn.edu, 215-898-7227) are also provided. The Honorable Michael A. Shipp, of the District of New Jersey, and his career clerk, Frances Huskey, can also be reached as references at 609-989-2009. Please let me know if any additional references or information is needed.

Sincerely,

Samuel I. Waranch



## Samuel I. Waranch

1904 Pine St. Apt. 1, Philadelphia, PA 19103 • 972-742-9005 • swaranch@pennlaw.upenn.edu

### EDUCATION

**University of Pennsylvania Carey Law School, Philadelphia, PA** May 2023

J.D. Candidate

Honors: *University of Pennsylvania Law Review*, Senior Editor

Activities: Criminal Law with Professor Paul Heaton, Teaching Assistant  
Custody and Support Assistance Clinic, Legal Advocate  
First Generation Professionals, Member  
Penn Law Ultimate Frisbee, Founder and Co-President

**Oberlin College, Oberlin, OH** May 2019

B.A., Political Science

Honors: Dean's Fellowship, Cole Scholar in Electoral Politics

Activities: Oberlin College Chess Team, Captain of Team, Three-Time "Small College" National Champion  
Student Senate, Student Life Committee Chair

### EXPERIENCE

**Quinn Emanuel Urquhart & Sullivan, New York, NY** Summer 2022

*Summer Associate*

**Federal Community Defender Office, Eastern District of Pennsylvania, Philadelphia, PA** Fall 2021

*Extern, Capital Habeas Unit*

- Drafted and edited habeas petitions in capital cases.
- Wrote memoranda addressing discreet legal questions to aid supervising attorneys.

**United States District Court, District of New Jersey, Trenton, NJ** Summer 2021

*Judicial Intern, Hon. Michael A. Shipp*

- Drafted opinions for a variety of civil and criminal cases and edited pending opinions.
- Served collaboratively on trial teams to brief the judge on motions in limine and synthesize points of dispute.

**National Museum of American Jewish History, Philadelphia, PA** Spring 2020

*Academic Liaison Intern*

- Assisted in the creation and implementation of seasonal academic initiatives.
- Interviewed and recruited prospective summer interns.

**Varsity Tutors, Philadelphia, PA** September 2019 – August 2020

*LSAT Tutor*

- Tutored the LSAT to aspiring law students in-person and online and developed individually tailored curricula.
- Served as a pro-bono tutor to prospective law students from underserved backgrounds.

**Oberlin Politics Department, Oberlin, OH** Fall 2018

*Research Assistant*

- Coded U.S. Congressional websites to aid in data collection and analysis for a National Science Foundation sponsored paper.
- Identified salient political trends across aspiring U.S Congressional members' campaign websites.

### INTERESTS

Chess; Ultimate Frisbee; Cooking

## Samuel I. Waranch – Penn Law Transcript

### Spring 2022

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Private Action: Antitrust, Rico, and Class Action	Howard Langer	A	3	
Visual Legal Advocacy	Regina Austin	A	2	Recommender
Evidence	David Rudovsky	B+	4	
Business Management	Rahul Kapoor	Credit	3	
Teaching Assistant – Criminal Law	Paul Heaton	Credit	2	Recommender
Law Review	N/A	Credit	1	

### Fall 2021

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Land Use in Practice	Thomas Witt	A	2	
Visual Legal Advocacy	Regina Austin	A	2	Recommender
Appellate Advocacy	Matthew Duncan	B+	3	
Federal Defenders Office Externship – Capital Habeas Unit	N/A	Credit	6	
Law Review	N/A	Credit	1	

### Spring 2021

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Land Use Law	Wendall Pritchett	A	3	Recommender
Law and Society in Japan	Eric Feldman	A-	3	
Torts	Jacques DeLisle	B+	4	
Constitutional Law	Seth Kreimer	B+	4	
Legal Practice Skills	Jessica Simon	Credit	3	
Legal Practice Skills (Cohort)	Conor Ferrall	Credit	N/A	

### Fall 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Criminal Law	Paul Heaton	A-	4	Recommender
Civil Procedure	Tobias Barrington Wolff	B+	3	
Contracts	Jean Galbraith	B+	3	
Legal Practice Skills	Jessica Simon	Credit	3	
Legal Practice Skills (Cohort)	Conor Ferrall	Credit	N/A	

**Samuel I. Waranch – Oberlin College Undergraduate Transcript****Major** – Political Science

**Note** – Ungraded athletic courses such as “strength training” and “bowling” as well as required “winter term” independent projects conducted during the month of January such as “intensive chess study” have been omitted for clarity.

**Spring 2019**

COURSE	Grade	Credit Units	Comment
Practicum in Applied Research	A-	4	
Introductory Astronomy	Pass	2	
Jewish Immigration	A+	2	
Beginning Piano	A-	2	
Coordinator - Chessco	Pass	1	I taught a 15-person beginner and introductory chess class through Oberlin's “experimental college.”

**Fall 2018**

COURSE	Grade	Credit Units	Comment
Partisanship Analysis	A	4	
History of the Holocaust	A-	4	
Project in Electoral Politics	B+	4	
Jewish Immigration	A	2	
Coordinator - Chessco	Pass	1	I taught a 15-person beginner and introductory chess class through Oberlin's “experimental college.”

**Spring 2018**

COURSE	Grade	Credit Units	Comment
Studies in Electoral Politics – Full	A	4	
Topics in Political Psychology	A-	4	
Political Economy of Development in Asia	A-	4	

**Samuel I. Waranch – Oberlin College Undergraduate Transcript**

Jewish Budapest: 1850-2018	A-	4	
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**Fall 2017**

COURSE	Grade	Credit Units	Comment
Racial Politics Post-Obama	A	4	
Revolution, Socialism, and Reform in China	A-	4	
The 1960's	A-	4	
Sexuality in Ancient Greece / Rome	A-	4	
Coordinator - Chessco	Pass	1	I taught a 15-person beginner and introductory chess class through Oberlin's "experimental college."

**Spring 2017**

COURSE	Grade	Credit Units	Comment
History of Antisemitism	A+	4	
Marxian Theory	A-	4	
Contemporary Left Politics	B+	4	
Politics in Africa Since 1980	B	4	

**Fall 2017**

COURSE	Grade	Credit Units	Comment
American Democracy Election Law & Policy	A-	4	
Themes in Western Art	A-	4	
European Political Theory: Plato-Rousseau	B+	4	
Money, Financial Systems & The Economy	C+	4	
Classical Guitar	Pass	2	

**Samuel I. Waranch – Oberlin College Undergraduate Transcript****Spring 2016**

COURSE	Grade	Credit Units	Comment
Geology of Natural Resources	A	4	
Introductory Sociology: Social Stratification, Inequity, and Behavior	B+	4	
Comparative Political Economy in the Middle East	B+	4	
Existentialism	NP	4	

**Fall 2015**

COURSE	Grade	Credit Units	Comment
Introduction to Peace and Conflict Studies	A-	4	
Principles of Economics	B+	4	
Problems of Philosophy	B	4	
Film Experience: The Cinematic World	B	4	
Introduction to No-Limit Hold'Em Poker Theory	Pass	2	

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

March 23, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Re: Clerkship Applicant Samuel Waranch

Dear Judge Walker:

I am a faculty member at the University of Pennsylvania Carey Law School and am writing this letter in support of Sam Waranch, who is applying for a clerkship. Sam was a 1L student in my criminal law course in 2020 and he worked as a teaching assistant (TA) for me for the same course in 2022. If you are looking for a clerk who is does high-quality work and is a great team player, Sam would be a great choice. I enthusiastically recommend him.

I approached Sam to work for me as a TA because he was among the top students when he took my course as a 1L. In addition to demonstrating mastery of the class material, Sam also was a consensus-builder in group discussions and prioritized listening to others over pushing out his own views. During his time as a TA, Sam teamed with two other TAs, and he again demonstrated his others-first approach to collaborative work, exhibiting an admirable flexibility and willingness to adapt his efforts to the needs of the group. If there was an assignment that one of the other TAs had a conflict with or didn't feel comfortable completing, Sam was happy to step in to make sure the work was done. He was also responsive to feedback and genuinely interested in identifying ways he could improve and become a better team member.

In addition to doing the normal TA tasks of curating class notes, leading review sessions, and meeting with students, Sam organized and led two supplementary lectures during the term—one summarizing recent empirical studies on prosecutor charging decisions in criminal cases, and another discussing the habeas process in death penalty cases. For the former lecture, he fielded an online survey that provided police reports on a case and asked class members to report how they would charge the case; Sam collected student responses in advance and then compared them to the actual responses of hundreds of prosecutors who completed a similar exercise in a published research study. It was an innovative way to present this material that really engaged the students and got them talking about how prosecutors should and do perform their work. Indeed, the author of the original study on which Sam based his lecture (a professor at another university) requested Sam's lecture materials once she heard about this creative way that he found to present the material.

One thing I particularly appreciated about both of Sam's lectures is that he took the time to explain, before he got into the substantive content of the discussion, the why of what we were learning by clearly outlining for the students how the particular content we would discuss could be useful in their future careers, whether or not they chose to pursue criminal work. Sam's big-picture, strategic way of thinking about the world was more broadly evident in my interactions with him. For example, when we'd talk about a lecture or other assignment, Sam was always very thoughtful about making sure he first clearly understood the end goal we were trying to further through the work before getting into the details of the task. This allowed him to make sure he was closely aligning his day-to-day activities with the broader vision I had for our students' growth throughout the semester.

To summarize, Sam is smart, easy to get along with, and flourishes in a team setting. He will be an excellent clerk and will make a meaningful contribution to any chambers. If you have any questions about Sam or if I can be of further assistance, please don't hesitate to reach out to me.

Warmly,

Paul Heaton  
Senior Fellow and Academic Director  
Quattrone Center for the Fair Administration of Justice  
pheaton@law.upenn.edu  
215.746.3353

Paul Heaton - pheaton@law.upenn.edu

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

March 23, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Re: Clerkship Applicant Samuel Waranch

Dear Judge Walker:

I write regarding Sam Waranch, who has applied to your office for a clerkship. Sam is an exceptionally strong student, among the best in his class. He would make an excellent clerk and serve your chambers well. I endorse him enthusiastically and urge you to hire him.

I had the pleasure to teach Sam in my first-year class Land Use Law and Policy. Even though the class was online due to COVID, it was a very engaged experience, and Sam was one of the most thoughtful participants. Sam was active in our discussions, and his comments made significant contributions. Sam has deep interest in government, and he frequently drew upon his interests and experiences to advance our conversations. His approach to the cases and other materials was particularly rigorous and his analysis consistently creative.

My land use class is a writing intensive one, requiring two papers. Sam's were among the very top in the class. He is a strong, thorough, and thoughtful writer. In his final paper for the class, Sam wrote an excellent analysis of the rules of street access and the constant tensions among the many different users of the streets (residents, businesses, pedestrians and cars being the most active). Sam adeptly wove class materials, primary research, and policy analysis to produce a paper that makes meaningful recommendations for legal reform to mediate these tensions. I was very impressed. As you can see from Sam's transcript, his performance in the law school has been very strong. He is one of the very best students in what the Dean has described as one of the strongest classes in the school's history.

In addition to his scholarly accomplishments, Sam has a deep commitment to public service, and he is active in several law school organizations. Sam is a leader of the law school chapter of the American Constitution Society as well as our high school Mock Trial program, supporting students in learning about our litigation system and developing the critical skills of analysis and oral presentation. Sam spent his 1L summer interning for Judge Michael Shipp, where he received excellent training and further developed his research and writing skills. He will come to your office ready to contribute on his first day.

Sam's passion for public service was developed long before he arrived at Penn. During his college years, he was active in many political and public service activities. Outside of class, I have discussed issues of public policy with him. Sam has spent a great deal of time thinking about the role of government and lawyers in American society, and he has nuanced views on many current issues. I expect Sam to make major contributions to the field of public interest law.

Through several encounters outside of class, I have gotten to know Sam. He is a warm and thoughtful person. He is hard-working, unassuming, supportive of others and clearly well-respected by his peers. I believe that Sam will be a leader in whatever field of law he chooses, and I expect to be bragging about him for years to come. You could not pick a better person for your office.

Please don't hesitate to contact me if I can provide any additional information.

Sincerely,

Wendell E. Pritchett, J.D., Ph.D.  
Presidential Professor of Law and Education  
pritchet@law.upenn.edu  
215-898-7483

Wendell Pritchett - pritchet@law.upenn.edu

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

March 23, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Re: Clerkship Applicant Samuel Waranch

Dear Judge Walker:

Samuel I. Waranch, a third-year student, is applying for a clerkship position. He was a student in my year-long Visual Legal Advocacy seminar. I came to know Sam well over two semesters. I think he will make an excellent clerk.

The seminar is an unusual one for a law school. The students work in crews and are expected to complete a rough cut of a short advocacy video by the end of the second semester. During class, we discuss pressing local social justice issues that might be suitable topics for a video. We explore the elements of a compelling advocacy video by viewing and critiquing advocacy videos and documentaries, some of which past students produced. Finally, every class session raises questions about the ethical obligations of visual legal advocates collaborating with grassroots activists and claimants who are low-income working people or members of groups that are plagued by unfair discrimination.

Sam Waranch was a frequent contributor to the class discussions and a committed and enthusiastic participant in the production process. He is intelligent, creative, empathetic, and engaged. His resume shows that he is a three-dimensional person. In addition to the many interests and hobbies he lists there, he is an aficionado of documentaries and possesses production skills. He came up with his crew's topic, Philadelphia's regulation of streeteries, i.e., the outdoor restaurant sheds that arose after covid restrictions barred or limited indoor dining.

Sam Waranch has gained experience beyond the classroom that confirms his stated ambition to become a litigator with a public interest-oriented practice. Helping people without equal access to the law is consistent with his "family values." Sam's career choice is inner-driven, not based on what everyone else is doing. During his externship with the federal defender office in Philadelphia, he worked on capital cases involving gruesome murders and defendants with serious mental illnesses. He found the work emotionally taxing and difficult to do while still a law student but meaningful and impactful.

During his district court summer internship, Sam discovered that law clerks could makeworthy contributions to a judge's opinions. Working in chambers was exciting and enjoyable, and Sam developed a passion for and confidence in writing and researching. I can confirm that Sam is a good listener. He works well in a team. Sam is friendly and gets along well with other people. He may offer candid and contrary opinions in a discussion, but he does so in a courteous manner. Sam is respectful of authority and knows that what the judge says goes. Finally, he served as a teaching assistant for one of the 1L Criminal Law professors. He finds criminal law intellectually engaging because he likens its tactics and strategies to chess. Not taken by the allure of a big firm job paying "big bucks," Sam may have found his calling in criminal law.

I hope that you will give Sam Waranch's application serious consideration. If you have any questions regarding this recommendation, please feel free to contact me via email at [raustin@law.upenn.edu](mailto:raustin@law.upenn.edu) or by phone at 215-932-9832.

Very truly yours,

Regina Austin  
William A. Schnader Professor  
Director, Penn Program on  
Documentaries & the Law  
Tel: 215-898-5185  
Email: [raustin@law.upenn.edu](mailto:raustin@law.upenn.edu)

Regina Austin - [raustin@law.upenn.edu](mailto:raustin@law.upenn.edu) - 215-898-5185



**Samuel I. Waranch**

1904 Pine St. Apt. 1 Philadelphia PA, 19103 • (972) 742-9005 • swaranch@upenn.pennlaw.edu

**Writing Sample: Cover Sheet**

The attached writing sample represents my final version of an opinion. I wrote it during my first-year summer judicial internship. To preserve confidentiality, citations to the record, the parties' names, dates, and the judge's name have been changed. I conducted all the research for this assignment independently; the writing is mine alone.

**NOT FOR PUBLICATION****UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

ROBIN'S RESTAURANT, INC.

Plaintiff,

v.

WESTERN INSURANCE GROUP,

Defendant.

Civil Action No. 21-12345 (KMJ)

**DRAFT OF MEMORANDUM OPINION****JONES, District Judge**

This matter comes before the Court upon Defendant Western Insurance Group's ("Defendant") Motion to Dismiss Plaintiff Robin's Restaurant ("Plaintiff") Complaint. (ECF No. 4.) Plaintiff opposed (ECF No. 8), and Defendant replied (ECF No. 12). The Court has carefully considered the parties' submissions and decides the matter without oral argument pursuant to Local Rule 78.1. For the reasons set forth herein, Defendant's Motion to Dismiss is granted.

**I. BACKGROUND**

This case is one of many emerging COVID-19-related insurance disputes. Plaintiff owns and operates a chain of sit-down restaurants throughout New Jersey. (Complaint ¶ 11, ECF No. 1.) Defendant is an insurance company based in New York. (*Id.* ¶ 12.) From July 15, 2019, to July 15, 2020, Defendant insured Plaintiff for business interruption losses, including "business personal property, business income and extra expense, [and] contamination coverage," through their insurance policy (the "Policy"). (*Id.* ¶ 18.) According to Plaintiff, "[t]he Policy is an all-risk policy,

insofar as it provides that covered perils under the policy means physical loss or physical damage unless the loss is specifically excluded or limited in the Policy.” (*Id.* ¶ 24.)

On March 9, 2020, New Jersey Governor Phil Murphy “issued a Proclamation of Public Health Emergency and State of Emergency, the first formal recognition of an emergency situation in the State of New Jersey as a result of COVID-19.” (*Id.* ¶ 52.) Shortly thereafter, Governor Murphy issued orders requiring non-essential businesses to cease operations and close all physical locations followed by a Stay-at-Home Order for all residents of New Jersey. (*Id.* ¶ 55.) These orders required the closure of the “brick-and-mortar premises of all non-essential retail businesses . . . as long as th[e] Order remains in effect.” (*Id.* ¶ 56.) Plaintiff complied with these orders and suspended its operations. (*Id.* ¶ 59.) Plaintiff alleges that its “compliance with these mandates resulted in [it] suffering business losses, business interruption[,] and extended expenses of the nature that the Policy covers and for which [its] reasonable expectation was that coverage existed in exchange for the premiums paid.” (*Id.* ¶ 61.)

Plaintiff, subsequently, submitted a claim for business losses pursuant to the Policy, but Defendant rejected the claim. (*See generally* Claim Denial Letter, ECF No. 2-8.) On November 14, 2020, Plaintiff filed the instant four-count action against the Defendant. (*See generally* Complaint.) Count One asserts a claim for declaratory relief. Plaintiff argues that Governor Murphy’s orders trigger coverage under the policy and that “the Policy provides coverage to Plaintiff for any current and future closures of businesses such as Plaintiff’s due to physical loss or damage and the policy provides business income coverage in the event that a loss or damage at the Insured Properties has occurred.” (*Id.* ¶¶ 68, 73.) Counts Two through Four assert claims for breach of contract based on Defendant’s denial of coverage under the Policy’s Business Income, Extra Expense, and Civil Authority Endorsements. (*Id.* ¶¶ 83-108.)

## II. LEGAL STANDARD

Rule 8(a)(2)<sup>1</sup> “requires only a ‘short and plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

When analyzing a Rule 12(b)(6) motion to dismiss, the district court conducts a three-part analysis. *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011). First, the court must “tak[e] note of the elements a plaintiff must plead to state a claim.” *Ashcroft v. Iqbal*, 556 U.S. 662, 675 (2009). Second, the court must accept as true all of a plaintiff’s well pleaded factual allegations and construe the complaint in the light most favorable to the plaintiff. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). The court, however, may ignore legal conclusions or factually unsupported accusations that merely state “the-defendant-unlawfully-harmed-me.” *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Finally, the court must determine whether the “facts alleged in the complaint are sufficient to show that the plaintiff has a ‘plausible claim for relief.’” *Fowler*, 578 F.3d at 211 (quoting *Iqbal*, 556 U.S. at 679). A facially plausible claim “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 210 (quoting *Iqbal*, 556 U.S. at 678). On a motion to dismiss for failure to state a claim, the “defendant bears the burden of showing that no claim has been presented.” *Hedges v. United States*, 404 F.3d 744, 750 (3d Cir. 2005).

## III. DISCUSSION

Both Plaintiff and Defendant agree that New Jersey law controls in this case. The question at issue here is the proper interpretation of the Policy. Under New Jersey Law, the

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<sup>1</sup> All references to a “Rule” or “Rules” hereinafter refer to the Federal Rules of Civil Procedure.

interpretation of a contract is a question of law. *Buczek v. Cont'l Cas. Ins. Co.*, 378 F.3d 284, 288 (3d Cir. 2004). In the instant case, Defendant's "All-Risk" Policy does not contain a "virus exclusion" which this court and others in the district have routinely enforced as barring coverage for COVID-19 related claims. See *Quakerbridge Early Learning LLC v. Selective Ins. Co. of New England*, 2021 WL 1214758, at \*4 (D.N.J. Mar. 31, 2021); *Benamax Ice, LLC v. Merch. Mut. Ins. Co.*, 2021 WL 1171633, at \*4 (D.N.J. Mar. 29, 2021); *Chester C. Chianese DDS LLC v. Travelers Cas. Ins. Co. of Am.*, 2021 WL 1175344, at \*1 (D.N.J. Mar. 27, 2021). The Court's job is thus to interpret the Policy to determine if coverage is appropriate in the absence of such an exclusion.

In interpreting insurance contracts under New Jersey Law, the state has routinely held that "[a]n insurance policy is a contract that will be enforced as written when its terms are clear in order that the expectations of the parties will be fulfilled." *Flomerfelt v. Cardiello*, 997 A.2d 991, 996 (N.J. 2010). "In attempting to discern the meaning of a provision in an insurance contract, the plain language is ordinarily the most direct route." *Chubb Custom Ins. Co. v. Prudential Ins. Co. of Am.*, 948 A.2d 1285, 1289 (N.J. 2008). "If the language is clear, that is the end of the inquiry." *Id.* "If the plain language of the policy is unambiguous," the Court should not engage in a strained analysis to "support the imposition of liability or write a better [contract] . . . than the one purchased." *Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 129 A.3d 1069, 1075 (N.J. 2016) (quoting *Chubb*, 948 A.2d at 1289). Finally, "[e]xclusionary clauses are presumptively valid and are enforced if they are 'specific, plain, clear, prominent, and not contrary to public policy.'" *Flomerfelt*, 997 A.2d 991, 996 (N.J. 2010) (quoting *Princeton Ins. v. Chunmuang*, 698 A.2d 9, 17 (N.J. 1997)). Plaintiff's breach of contract and declaratory judgment claims thus require it to establish that they are "entitled to coverage

within the basic terms of the [Policy].” *Ralph Lauren Corp. v. Factory Mut. Ins. Co.*, 2021 WL 1904739, at \*3 (D.N.J. May 12, 2021) (internal quotations and citation omitted).

The parties dispute the proper interpretation of the Policy whose coverage is triggered by “direct physical loss of or damage to” the covered properties. The Business Income endorsement explains that,

[w]e will pay for the actual loss of Business Income you sustain due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration.’ The ‘suspension’ must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss.

(Policy \*52.) Similarly, the Extra Expense Endorsement states that “Extra Expense means reasonable and necessary expenses you incur during the ‘period of restoration’ that you would not have incurred if there had been no direct physical loss of or damage to property caused by or resulting from a Covered Cause of Loss.” (*Id.* at \*53.) The Civil Authority Provision likewise conditions coverage on “direct physical loss of or damage to property at locations, other than described premises, caused by or resulting from a Covered Cause of Loss.” (*Id.* at \*79.)

Plaintiff alleges breach of contract for Defendant’s denial of coverage for its COVID-19 related losses under either the Business Income, Extra Expense, or Civil Authority endorsements of the Policy. Defendant challenges coverage under these endorsements.

**A. Loss of Use of Covered Property Stemming from Government Orders Does Not Constitute Direct Physical Loss or Damage.**

A plain reading of the unambiguous language of the Policy reveals that coverage is conditioned for “physical loss of or damage” to covered property caused by or resulting from a “Covered Cause of Loss.” Plaintiff alleges that orders preventing use of their covered properties

amounts to physical loss or damage because of COVID-19 or the apparent future threat of it. (Comp. ¶¶ 27, 35, 59-60.)

In the instant case, Plaintiff’s complaint fails to allege specific COVID-19 contamination. When the “[c]omplaint lacks any allegations about the existence of anything affecting the physical condition of its premises . . . its losses are a loss of use untethered from the physical condition of the property itself.” *TAQ Willow Grove, LLC. v. Twin City Fire Ins.*, 2021 WL 131555, at \*5 (E.D. Pa. Jan. 14, 2021); *See also SSN Hotel Mgmt., LLC. v. Harford Mut. Ins. Co.*, No. 20-6228, 2021 WL 1339993, at \*4 (E.D. Pa. Apr. 8, 2021). “[T]hese allegations are insufficient.” *Ralph Lauren Corp. v. Factory Mut. Ins. Co.*, No. 20-010167, 2021 WL 1904739, at \*3 (D.N.J. May 12, 2021); *See also Mac Prop. Grp. LLC. v. Selective Fire & Cas. Ins. Co.*, No. L-2629-20, 2020 WL 7422374, at \*8–9 (N.J. Super. Ct. Nov. 5, 2020) (finding “no direct physical loss or damage to property” resulting from an “order of civil authority” addressing COVID-19).

As more and more courts deal with COVID-19 related insurance claims, the consensus that has emerged in this circuit is that the loss of use of covered properties stemming from a civil authority order is insufficient to cause direct physical loss or damage. In *Port Authority of New York and New Jersey*, the third circuit addressed the interpretation of the phrase “direct physical loss or damage” under New Jersey law in the context of insurance claims for asbestos damage. *See Port Auth. Of N.Y. & N.J. v. Affiliated FM Ins. Co.*, 311 F.3d 226, 235 (3d Cir. 2002). The Court concluded that physical damage to property meant “distinct, demonstrable, and physical alteration of its structure.” *Id.* (quoting 10 Couch on Ins. §148:46 (3d ed. 1998)). Damages by things unnoticeable to the naked eye must meet a higher standard than those that can easily damage a building. *Id.* at 235.

The line of cases Interpreting *Port Authority* in the context of COVID-19 related insurance disputes clearly “are instructive on whether the threat of COVID-19 constitutes ‘direct physical loss or direct physical damage to property.’ These [recent] decisions have **almost uniformly concluded that such a threat does not trigger insurance coverage.**” *Hair Studio 1208, LLC v. Hartford Underwriters Insur. Co.*, No. 20-2171, 2021 WL 1945712, at \*7 (E.D. Pa. May 14, 2021) (emphasis added); *See, e.g., Id.; Ralph Lauren Corp. v. Factory Mut. Ins. Co.*, No. 20-010167, 2021 WL 1904739, at \*3 (D.N.J. May 12, 2021); *Paul Glat MD, P.C. v. Nationwide Mut. Ins. Co.*, No. 20-5271, 2021 WL 1210000, at \*5–6 (E.D. Pa. Mar. 31, 2021); *Chester Cty. Sports Arena v. The Cincinnati Specialty Underwriters Ins. Co.*, 2021 WL 1200444, at \*7 (E.D. Pa. Mar. 30, 2021).

In response to Defendant’s motion to dismiss, Plaintiff cites out of circuit decisions to support the proposition that “a condition that renders property unsuitable for its intended use constitutes a direct physical loss” (Pl.’s Opp’n Br. \*13). Plaintiff alleges that even “fear of damage can be a direct physical loss.” (*Id.*) To support this, Plaintiff solely cites *Studio 417*. *See Studio 417 Inc. v. Cincinnati Ins. Co.*, 2020 WL 4692385 (W.D. Mo. Aug. 12, 2020); (Pl.’s Opp’n Br. 14, 16, 19.) The vast majority of cases that have emerged since *Studio 417* have explicitly rejected this approach. *See, e.g., Zwillro V, Corp. v. Lexington Insur. Co.*, 504 F. Supp. 3d 1034 (W.D. Mo. Dec. 02, 2020); *1 S.A.N.T., Inc. v. Berkshire Hathaway, Inc.*, 2021 WL 147139, at \*6–7 (W.D. Pa. Jan. 15, 2021). The Court will not deviate from the recent line of reasoning employed in this circuit and fails to find coverage stemming from Plaintiff’s “loss of use” of covered properties.

**B. Plaintiff Has Failed to Allege that COVID-19 Has Caused Direct Physical Loss or Damage to Covered Properties.**



Plaintiff alternatively contends that their covered restaurants have experienced a covered cause of loss from direct COVID-19 contamination because “Plaintiff alleges that its insured property is at imminent risk of coronavirus contamination, or it may have already been contaminated and that surrounding property has been contaminated.” (Pl.’s Opp’n Br. 18-19, Complaint ¶¶ 27, 56-59.) Plaintiff argues that “clear evidence of the coronavirus being present throughout the state, its presence in and around Plaintiff’s insured properties, and the severe safety risks associated with allowing individuals to come in[to]” close contact with one another is sufficient to warrant a finding that COVID-19 has damaged the covered properties. (Reply 19, Complaint ¶¶ 58-59.)

In its complaint, however, Plaintiff never offers specific factual allegations about COVID-19 damaging its restaurants or other properties near its restaurants. In fact, “[p]laintiff does not seek any determination whether the Coronavirus is physically in or at the Insured Properties” (Complaint ¶ 70.) Plaintiff instead alleges that its premises are unsafe solely because of the inevitability of individuals being near one another. (Comp. ¶ 60.)

Plaintiff’s conclusory allegations, relying on the pervasiveness of COVID-19 throughout New Jersey, are insufficient to trigger coverage under the Business Income, Extra Expense, or Civil Authority Endorsements and survive a 12(b)(6) motion. This is because “[e]ach of the coverage provisions Plaintiff relies on specifically require ‘direct physical loss or damage’ to trigger the Policy . . . Plaintiff has not alleged any facts that support a showing that its property was physically damaged.” *Boulevard Carroll Entm’t Grp., Inc. v. Fireman’s Fund Ins. Co.*, 2020 WL 7338081, \*2 (D.N.J. Dec. 14, 2020). This Court agrees with the *Boulevard Carroll* Court and fails to find a sufficient factual basis to conclude that its covered properties suffered a loss

caused directly from COVID-19 contamination or, in the case of the Civil Authority Endorsement, to surrounding property.

However, even if Plaintiff properly alleged the existence of COVID-19 contamination at covered properties, this would not be enough to support coverage under the Policy. This is because “the presence of a virus that harms humans but does not physically alter structures does not constitute coverable property loss or damage.” *7th Inning Stretch LLC v. Arch Ins. Co.*, 2021 WL 1153147, at \*2 (D.N.J. Mar. 26, 2021); *See also Handel v. Allstate Ins. Co.*, 2020 WL 645893, at \*3 (E.D. Pa. Nov. 6, 2020) (relying on *Port Auth. of New York & New Jersey v. Affiliated FM Ins. Co.*, 311 F.3d 226, 235 (3d Cir. 2002)) (noting that physical loss or damage requires “that the functionality of the property ‘was nearly eliminated or destroyed’ or the ‘property was made useless or uninhabitable’”). Plaintiffs’ claims, even if properly plead, would still be insufficient.

The Court is sympathetic to the plight of business owners in the wake of the COVID-19 pandemic; however, it will not deviate from the weight of authority in construing identical contract language to “rewrite the contract for the benefit of either party.” *Del. Valley Plumbing*, 2021 WL 567994, at \*7. The Court, accordingly, grants Defendants’ Motion to Dismiss.

#### **IV. CONCLUSION**

For the reasons set forth above, Defendants’ Motion to Dismiss is granted. The Court will enter an Order consistent with this Memorandum Opinion.

## Applicant Details

First Name **Wesley**  
 Last Name **Ward**  
 Citizenship Status **U. S. Citizen**  
 Email Address [wesleybward@gmail.com](mailto:wesleybward@gmail.com)  
 Address

### Address

Street  
**308 Packard St. Apt. 6**  
 City  
**Ann Arbor**  
 State/Territory  
**Michigan**  
 Zip  
**48104**  
 Country  
**United States**

Contact Phone Number **3098303879**

## Applicant Education

BA/BS From **Illinois State University**  
 Date of BA/BS **May 2017**  
 JD/LLB From **The University of Michigan Law School**  
<http://www.law.umich.edu/currentstudents/careerservices>  
 Date of JD/LLB **May 6, 2023**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **University of Michigan Journal of Law Reform**  
 Moot Court Experience **Yes**  
 Moot Court Name(s) **Global Antirutst Institute Moot Court**  
**Campbell Moot Court**

## Bar Admission

## Prior Judicial Experience

Judicial Internships/  
Externships                      **No**  
Post-graduate Judicial  
Law Clerk                        **Yes**

**Specialized Work Experience**

Specialized Work  
Experience                        **Bankruptcy**

**Recommenders**

Mortenson, Julian  
jdmorten@umich.edu  
734-763-5695  
Pottow, John  
pottow@umich.edu  
734-647-3736  
Salim, Oday  
osalim@umich.edu  
7347637087

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

April 08, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a third-year law student at the University of Michigan, and I am writing to apply for a clerkship in your chambers for the 2024-2025 term.

I am a competitive distance runner and a Type 1 diabetic. Balancing the rigors of law school with training and managing a chronic illness has taught me to be highly organized, diligent, and resourceful. These traits allowed me to succeed in my jobs before law school, where working as a legislative assistant and in political advertising, I utilized my ability to adjust to sudden changes and take ownership of large projects.

My internships with the Consumer Protection Bureau of the New York Attorney General's Office and the National Consumer Law Center have strengthened my desire to be a public interest litigator. After law school, I will clerk in the U.S. Bankruptcy Court for the District of Delaware for Judge Craig T. Goldblatt. There, I hope to improve my legal research skills, engage with cutting-edge corporate bankruptcies, and gain experience with complicated commercial litigation that affects consumers. A further clerkship in your chambers will allow me to further refine my writing skills and immerse myself in a wider range of legal issues.

I have attached my résumé, transcripts, writing sample, and letters of recommendation from the following professors:

- Professor Julian Mortenson: [jdmorten@umich.edu](mailto:jdmorten@umich.edu), (734) 763-5695;
- Professor John A.E. Pottow: [pottow@umich.edu](mailto:pottow@umich.edu), (734) 647-3736; and
- Clinical Professor Oday Salim: [osalim@umich.edu](mailto:osalim@umich.edu), (586) 255-857.

Thank you for your time and consideration.

Sincerely,

Wesley B. Ward

## Wesley B. Ward

308 Packard Street, Apartment 6, Ann Arbor, Michigan 48104  
(309) 830-3879 • wward@umich.edu

### EDUCATION

#### UNIVERSITY OF MICHIGAN LAW SCHOOL

Ann Arbor, Michigan

*Juris Doctor*

Expected May 2023

Journal: Michigan Journal of Law Reform, *Executive Editor*, Vol. 56

Activities: Research Assistant to Professor John A.E. Pottow; Global Antitrust Institute Moot Court Competition, *Quarterfinalist* (2023); Henry M. Campbell Moot Court Competition, *Participant* (2022), *Marshal* (2020-21); Environmental Law and Sustainability Clinic at Michigan Law (2022)

#### ILLINOIS STATE UNIVERSITY

Normal, Illinois

*Bachelor of Science* in Finance, *summa cum laude* and *Bachelor of Arts* in Political Science, *summa cum laude*

December 2017

Honors: Student Laureate of The Lincoln Academy of Illinois (2017) (one student honored from each Illinois university)  
Robert G. Bone Scholarship (2017) (top academic honor at Illinois State)

Activities: Division I Cross-Country/Track & Field; Department of History Research Assistant

### EXPERIENCE

#### U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

Wilmington, Delaware

*Incoming Law Clerk for the Honorable Craig T. Goldblatt*

September 2023 – September 2024

#### OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA

Washington, D.C.

*Pro Bono Research Lead*

November 2022 – Current

- Directed a team of four Michigan Law students in researching and writing a substantive memo for the Office of Consumer Protection and coordinated our progress with supervisors in the District of Columbia and California.

#### NATIONAL CONSUMER LAW CENTER

Boston, Massachusetts

*Summer Intern*

May 2022 – August 2022

- Wrote articles addressing emerging legal theories to tackle problems faced by Fair Debt Collection Practices Act plaintiffs in gaining access to federal courts.
- Analyzed over 1,200 complaints from the Consumer Financial Protection Bureau's database regarding consumers' difficulties with rental debt collectors, culminating in drafting a 20-page white paper for NCLC.

#### OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL

New York, New York

*Summer Intern, Consumer Frauds and Protection Bureau*

June 2021 – July 2021

- Researched complex legal issues and drafted memoranda in preparation for litigation against small business loan providers and automobile loan providers engaged in illegal conduct.
- Analyzed and summarized materials provided by whistleblowers in an investigation of a for-profit college, and drafted document requests sent to the target of that investigation.

#### STATE OF ILLINOIS

Springfield, Illinois

*Legislative Assistant to State Senator Ram Villivalam*

November 2019 – August 2020

- Coordinated Senator Villivalam's capitol activities including filing legislation and meetings with stakeholders.
- Educated constituents on the latest local, state, and federal agency programs to help working people and small businesses during the pandemic-related economic downturn.

#### THREE POINT MEDIA

Chicago, Illinois

*Production Assistant*

May 2018 – December 2018

- Produced television advertisements for political campaigns with budgets from \$100 thousand to over \$25 million, including high-profile congressional, and gubernatorial campaigns in a high-pressure environment.

### ADDITIONAL

**Interests:** Competitive marathon running and Type 1 Diabetes advocacy.

**Volunteer:** United Community Housing Coalition (2020-21), ALS Association (2019), The Immigration Project (2017).



Control No: E196912401

Issue Date: 06/06/2023

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# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: Ward, Wesley Barnes  
Student#: 44896496



*Paul R. Larson*  
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Grade
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### Fall 2020 (August 31, 2020 To December 14, 2020)

LAW	510	002	Civil Procedure	Nicholas Bagley	4.00	4.00	4.00	B+
LAW	520	004	Contracts	Nicolas Cornell	4.00	4.00	4.00	B+
LAW	530	001	Criminal Law	David Moran	4.00	4.00	4.00	B+
LAW	593	008	Legal Practice Skills I	Nancy Vettorello	2.00		2.00	S
LAW	598	008	Legal Pract:Writing & Analysis	Nancy Vettorello	1.00		1.00	S

<b>Term Total</b>	<b>GPA: 3.300</b>	<b>15.00</b>	<b>12.00</b>	<b>15.00</b>
<b>Cumulative Total</b>	<b>GPA: 3.300</b>		<b>12.00</b>	<b>15.00</b>

### Winter 2021 (January 19, 2021 To May 06, 2021)

LAW	540	001	Introduction to Constitutional Law	Julian Davis Mortenson	4.00	4.00	4.00	A-
LAW	569	001	Legislation and Regulation	Daniel Deacon	4.00	4.00	4.00	A-
LAW	580	001	Torts	Roseanna Sommers	4.00	4.00	4.00	B+
LAW	594	008	Legal Practice Skills II	Nancy Vettorello	2.00		2.00	S

<b>Term Total</b>	<b>GPA: 3.566</b>	<b>14.00</b>	<b>12.00</b>	<b>14.00</b>
<b>Cumulative Total</b>	<b>GPA: 3.433</b>		<b>24.00</b>	<b>29.00</b>

Continued next page >

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

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Control No: E196912401

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# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: Ward, Wesley Barnes  
Student#: 44896496



*Paul R. Larson*  
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Grade
<b>Fall 2021 (August 30, 2021 To December 17, 2021)</b>								
LAW	637	001	Bankruptcy	John Pottow	4.00	4.00	4.00	A-
LAW	675	001	Federal Antitrust	Daniel Crane	3.00	3.00	3.00	A
LAW	741	004	Interdisc Prob Solv	Barbara Mcquade	3.00	3.00	3.00	A
			Identity Theft: Causes and Countermeasures	Bridgette Carr				
				Florian Schaub				
LAW	768	001	21st C. Infrastr/Lawyer's Role	Andrew Doctoroff	2.00	2.00	2.00	A
LAW	885	001	Mini-Seminar	Nicolas Cornell	1.00	1.00	1.00	S
			U American Ecological Writings					
LAW	900	133	Research	Barbara Mcquade	2.00	2.00	2.00	A
<b>Term Total</b>				<b>GPA: 3.914</b>	<b>15.00</b>	<b>14.00</b>	<b>15.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.610</b>		<b>38.00</b>	<b>44.00</b>	
<b>Winter 2022 (January 12, 2022 To May 05, 2022)</b>								
LAW	716	001	Complex Litigation	Maureen Carroll	4.00	4.00	4.00	A
LAW	803	001	Advocacy for Underdogs	Andrew Buchsbaum	2.00	2.00	2.00	A
LAW	930	001	Env'l Law & Sustain Clinic	Oday Salim	4.00	4.00	4.00	A-
LAW	931	001	Env'l Law & Sustain Cln Sem	Oday Salim	3.00	3.00	3.00	A-
<b>Term Total</b>				<b>GPA: 3.838</b>	<b>13.00</b>	<b>13.00</b>	<b>13.00</b>	
<b>Cumulative Total</b>				<b>GPA: 3.668</b>		<b>51.00</b>	<b>57.00</b>	

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# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: Ward, Wesley Barnes  
Student#: 44896496



*Paul R. Johnson*  
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Grade
<b>Fall 2022 (August 29, 2022 To December 16, 2022)</b>								
LAW	483	001	Judicial Clerkships	Kerry Komblatt	2.00	2.00	2.00	A-
LAW	669	001	Evidence	Richard Friedman	4.00	4.00	4.00	A
LAW	677	001	Federal Courts	Leah Litman	4.00	4.00	4.00	B+
LAW	867	001	Antitrust and Democracy	Daniel Crane	2.00	2.00	2.00	A-
LAW	885	008	Mini-Seminar	Chris Walker	1.00	1.00	1.00	S
			Lawyering in Washington, DC					
<b>Term Total</b>					<b>GPA: 3.666</b>	<b>13.00</b>	<b>12.00</b>	<b>13.00</b>
<b>Cumulative Total</b>					<b>GPA: 3.668</b>	<b>63.00</b>	<b>70.00</b>	
<b>Winter 2023 (January 11, 2023 To May 04, 2023)</b>								
LAW	643	001	Crim Procedure: Bail to Post Conviction Review	Barbara Mcquade	3.00	3.00	3.00	A
LAW	730	001	Appellate Advoc:Skills & Pract	Evan Caminker	4.00	4.00	4.00	A
LAW	797	001	Model Rules and Beyond	Bob Hirshon	3.00	3.00	3.00	A
LAW	815	001	Public Law Workshop	Julian Davis Mortenson	2.00	2.00	2.00	A
				Chris Walker				
LAW	854	001	Anti-corruption Law & Practice	Chavi Nana	2.00	2.00	2.00	A
LAW	886	008	Mini-Seminar II	Chris Walker	0.00	0.00	0.00	S
			Lawyering in Washington, DC					
LAW	900	220	Research	John Pottow	1.00	1.00	1.00	A+
<b>Term Total</b>					<b>GPA: 4.020</b>	<b>15.00</b>	<b>15.00</b>	<b>15.00</b>
<b>Cumulative Total</b>					<b>GPA: 3.735</b>	<b>78.00</b>	<b>85.00</b>	

End of Transcript  
Total Number of Pages 3

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## University of Michigan Law School Grading System

### Honor Points or Definitions

Through Winter Term 1993		Beginning Summer Term 1993	
A+	4.5	A+	4.3
A	4.0	A	4.0
B+	3.5	A-	3.7
B	3.0	B+	3.3
C+	2.5	B	3.0
C	2.0	B-	2.7
D+	1.5	C+	2.3
D	1.0	C	2.0
E	0	C-	1.7
		D+	1.3
		D	1.0
		E	0

#### Other Grades:

- F Fail.
- H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.
- I Incomplete.
- P Pass when student has elected the limited grade option.\*
- PS Pass.
- S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.\* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)
- T Mandatory pass when student is transferring to U of M Law School.
- W Withdrew from course.
- Y Final grade has not been assigned.
- \* A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

### Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

### Official Copies

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The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records  
University of Michigan Law School  
625 South State Street  
Ann Arbor, Michigan 48109-1215  
(734) 763-6499

MICHIGAN LAW  
UNIVERSITY OF MICHIGAN  
701 South State Street  
Ann Arbor, MI 48109-3091

JULIAN DAVIS MORTENSON  
James G. Phillipp Professor of Law

April 10, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I write with an enthusiastic recommendation of my student Wes Ward for a clerkship in your chambers. Wes is an incisive thinker, an earnest believer in public service, and a thoughtful and other-oriented human being. He'd be a terrific addition to your clerkship class both for the substance of his work and for his team play in chambers.

I first got to know Wes as a student in my first-year constitutional law class in the winter semester of 2021. Even in the somewhat odd hybrid circumstances of the class, Wes stood out from early on in the semester, in part because of his sheer command of the material on cold call, and in part because he attended every office hours bursting with questions for me—and enthusiasm for his classmates' perspective. He's the kind of person who is so intrinsically interested in the ideas being engaged with that the sheer intellectual generosity of his curiosity and enthusiasm is infectious. I came to think of him as part of the "glue" that would hold office hours conversations together, always finding a way to stitch together something Person A said with something Person B had said earlier. He had a way of doing this that was both useful and also made the conversation—all of which was taking place over Zoom, at least for office hours—feel more integrated and less like a series of one-off Q&A interventions

Wes did a terrific job on the exam, turning in a thorough, careful, insightful and creative set of responses to the essay questions—written with a clear and incisive style that made it easy to follow his analysis of even the most complicated questions. I was struck in particular by his discussion of a fact pattern involving Covid-related restrictions and requirements for a state bar exam; I had intended the question principally to test equal protection concepts, but in addition to thoroughly airing those issues, Wes went on to identify a very interesting set of Dormant Commerce Clause issues that I hadn't anticipated coming out of anyone's responses. It was a really impressive job.

Wes has come to law school with a strong sense of public service mission—the sort of earnest and realistic commitment to dedicating his career to helping others that is especially inspiring to encounter as a teacher. He worked before law school at a legal non-profit for low-income migrants, and has devoted much of his law school time—in the classroom, in extra-curriculars, and in the summers—to exploring a wide range of government and public interest career possibilities. He remains open to many public service possibilities, but it seems to me that the question of consumer protection occupies a place particularly close to his heart. In part this is because of his work experience at places like the New York Consumer Fraud and Protection Bureau, but more fundamentally I think it is connected to his own sense for the vulnerability of families facing hard questions about difficult situations. His father was diagnosed with ALS several years ago, and the process of trying to find treatments for what is an all-but-hopeless diagnosis opened Wes's eyes to the ways that consumer protection implicates some of the most vulnerable social relationships that exist. I really look forward to seeing where these interests take Wes over the course of his career, and I am confident that we can expect great contributions from him for decades to come.

I hope it's clear that I hold Wes in high regard, both personally and academically. Please don't hesitate to let me know if I can answer any questions or otherwise help you assess his candidacy in any way.

Best regards,

Julian Davis Mortenson  
James G. Phillipp Professor of Law  
Michigan Law School

Julian Mortenson - jdmorten@umich.edu - 734-763-5695

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Professor of Law

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April 10, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

It is a pleasure to recommend Wesley Ward for a judicial clerkship. Wesley was in my bankruptcy class this past year at Michigan Law and he distinguished himself both in class and on the examination (blindly-graded). He demonstrated not just a sharp mind but a voracious interest in the policy, especially behind the consumer bankruptcy system. He clearly has strong passions for consumer protection and financial regulation. I did not know of his prior experience in public service, but learning of it after the fact confirms the positive impressions I developed during my class.

But rather than his law school successes, what I'd like to comment on briefly regards his non-law school "personal story," which may not come through from review of his transcript. As a young man, Wes had to confront the devastating news of his father's ALS diagnosis. He moved across country from Illinois to North Carolina to help care for his father. He did so until his own care was not enough and his father for his final days had to go into a professional setting. Losing his parent after having uprooted a fledgling career did not phase Wes, as he applied to law school during all this and came to Michigan. He just did the right thing and carried on.

After an understandably shaky start—and let me be clear, I just mean B+/average start, not bad—Wes started to find himself when he got to choose courses of his own; you can see on even a cursory review of his transcript the inexorable upward march of his grades. Now, if you want someone who was editor-in-chief of the law review, Wes will not be your guy. He's smart and did well in my class, but he was not legendary. But if you want someone who not only mastered a complex statutory code but also went beyond it to interrogate its deep structure (or lack thereof) for richer understanding and analysis, then he could be a great fit.

He's a humble, modest, and caring young man. It's impossible to imagine him not fitting in well in any chambers. I recommend him unhesitatingly.

If I can be of any further questions in this matter, please reach out at your convenience.

Very truly yours,

John A. E. Pottow

John Pottow - pottow@umich.edu - 734-647-3736